

KABG040001742021



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC,
AT : BELAGAVI.**

Present : **SMT. SAROJA. M**, M.A., L.L.M.,
Prl. Civil Judge & J.M.F.C., Belagavi.

Dated on this the 24th day of April-2024

ORIGINAL SUIT NO.133/2021

PLAINTIFFS :

1)	<i>Shri. Mahantesh Santram Rudrannavar, Age : 38 years, Occ : Service, R/o. H. No.24/A, 3rd Cross, 3rd Main Basav Colony, Bauxite Road, Belagavi (died on 01.11.2021) (Since dead, R/by by his LRs plaintiff Nos.1A to 1C.)</i>
1(a)	Smt. Roopa W/o Mahantesh Rudrannavar, Age : 39 years, Occ : Household, R/o. H. No.24/A, 3 rd Cross, 3 rd Main Basav Colony, Bauxite Road, Belagavi.
1(b)	Master. Tushar S/o Mahantesh Rudrannavar, Age : 13 years, Occ : Student, R/o. H. No.24/A, 3 rd Cross, 3 rd Main Basav Colony, Bauxite Road, Belagavi.

1(c)	Kumari. Rajeswari D/o Mahantesh Rudrannavar, Age : 12 years, Occ : Student, R/o. H. No.24/A, 3 rd Cross, 3 rd Main Basav Colony, Bauxite Road, Belagavi.
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Vs.

DEFENDANTS :

1)	Smt. Mahadevi W/o Santram Rudrannavar, Age : 64 years, Occ : Household, R/o : H. No.24/A, 3 rd Cross, 3 rd Main Basav Colony, Bauxite Road, Belagavi.
2)	Shri. Mahesh S/o Santram Rudrannavar, Age : 35 years, Occ : Service, R/o : H. No.24/A, 3 rd Cross, 3 rd Main Basav Colony, Bauxite Road, Belagavi.
3)	Smt. Shridevi W/o Mahesh Ghatnatti, Age : 41 years, Occ : Household, R/o : H. No.24/A, 3 rd Cross, 3 rd Main Basav Colony, Bauxite Road, Belagavi.

PARTIES TO I.A.NO.VI

Applicant/Plaintiff No.1A :

1)	Smt. Roopa W/o Mahantesh Rudrannavar.
	(By Shri. A. C. Kathari, Adv.)

Vs.

Opponents/Defendants :

1)	Smt. Mahadevi W/o Santram Rudrannavar and others.
	(By Shri. L. S. Kuri, Adv.)

**ORDER ON I.A.NO.VI FILED U/O.XXXIX RULES-1 & 2 R/w.
SEC.151 OF C.P.C.**

The plaintiffs have filed I.A.No.VI U/O. XXXIX Rules-1 and 2 R/w. Sec.151 of C.P.C. seeking for ad-interim injunction to restrain the defendants, their agents, servants or anybody acting on their behalf from changing the nature of suit property till the disposal of the suit.

2. In the affidavit annexed to the application, it is stated that plaintiff No.1(a) is the wife of deceased plaintiff Shri. Mahantesh Santram Rudrannavar. The description of the suit property for the relief of partition and separate possession is in respect of property bearing Plot No.24 out of Survey No.58/1A totally measuring 1800 Sq. Feet situated at Basava Colony. It is further stated that her father-in law i.e., the father of defendant Nos.2 and 3 and husband of defendant No.1 Shri. Santram S/o Mallappa Rudrannavar @ Hatti died on 25.06.2002 at Belagavi. It is further stated that her husband and the defendants are the only legal heirs of late Santram. Her husband i.e., original plaintiff died on 01.11.2021 leaving behind her and her children Tushar and Rajeshwari as his legal heirs. Her father-in-law Shri. Santram was serving in the Government Department and after his death, the suit property was purchased by the defendant No.1 in her name by using the pensionary and

monetary benefits and joint family funds out of ancestral joint family agricultural properties. It is further stated that her husband, herself, her children and the defendants constitute a Hindu Undivided Joint Family and they are in joint possession and enjoyment of the suit property. It is further stated that the defendant No.1 is her mother-in-law and the suit property is being purchased in her name during the year 2003. Taking undue advantage of her name entered in the revenue records in respect of suit property she has transferred the suit property in the name of defendant No.3 by virtue of gift deed dated 24.06.2013. After filing of written statement by the defendants, the fact that the gift deed executed in favour of defendant No.3 has come to the knowledge of plaintiffs. However, the suit property is purchased out of the joint family funds. Now the defendant No.3 with an intention to deprive the shares of plaintiff in the suit property is trying to alienate the same in favour of third parties. It is further stated that by dispossessing the plaintiffs from the suit property, the defendants are creating third party interest and thereby the third party acting under the defendants are going to demolish the house property. If the said illegal act is performed by the defendants, then the plaintiffs will be dispossessed illegally and the nature of suit property will be changed. As such, the plaintiffs cannot stay in the suit property when the same will be demolished and their right in the suit property will be deprived. There will be multiplicity of proceedings and prejudice to the parties and they will be put to untold hardship and inconvenience. Hence, prayed to allow the application.

3. The defendants have filed objections and contended that the present application is not maintainable in the eye of law. The prayer sought by the plaintiffs is not maintainable as the defendant No.3 is residing in the suit house property along with her old aged mother. Therefore, the question of changing the nature of suit property does not arise. The suit property is self-acquired property of defendant No.1 and she has purchased the suit property by taking loan from the relatives and banks in the year 2003. It is further contended that the defendant No.1 has already gifted the suit property by way of registered gift deed dated 24.06.2013 and the suit property was transferred to defendant Nos.2 and 3 by virtue of said gift deed and the defendant Nos.2 and 3 are the absolute owners of the suit property and since 2013, the said gift deed was not challenged by the plaintiffs to till date. The plaintiffs knowing fully well of the gift deed have filed this false suit against the defendants only to harass defendant No.1 and to get monetary gain. Hence prayed to dismiss the application with costs.

4. Heard on both sides.

5. The following points arise for my consideration :

POINTS

- 1) *Whether the plaintiffs have made out prima facie and triable case for the grant of injunction?*
- 2) *Whether the balance of convenience lies in favour of the plaintiffs?*

3) *Whether the plaintiffs have made out that withholding of the restraining order will cause irreparable loss and injury to them?*

4) *Whether the plaintiffs are entitled to the relief sought for?*

5) *What order?*

6. My answer to above points are as under :

Point No.1 : In the Negative,

Point No.2 : In the Negative,

Point No.3 : In the Negative,

Point No.4 : In the Negative,

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

REASONS

7. **Point Nos.1 to 3** : In order to avoid repetition of facts, these points are taken up together for discussion. It is the case of plaintiffs that deceased plaintiff No.1 and defendant Nos.2 and 3 are the children and defendant No.1 is the wife of Santram S/o Mallappa Rudrannavar @ Hatti who died on 25.06.2002 and the suit property was purchased by defendant No.1 in her name by using the pensionery/monetary benefits and joint family funds out of the ancestral joint family agricultural properties. By taking undue advantage of their names in the revenue records, the defendants are trying to change the nature of the suit property. Hence, this application.

8. The defendants contended that the suit property is the self-acquired property of defendant No.1 and she purchased the same as per sale deed dated 22.04.2003 for valuable consideration of Rs.3,88,000/- from its erstwhile owner Smt. Shantavva W/o Veerupaxappa Dhuli. The defendant No.1 adjusted the entire sale consideration on her own as her grandmother Smt. Neelavva W/o Iranagouda Patil had executed registered Will dated 13.09.1980 in her favour in respect of property bearing CTS No.2513 situated at Mali Galli, Belagavi. After the death of her grandmother, the name of defendant No.1 was entered to CTS extract and she let two blocks in CTS No.2513 for rent and out of the rent collected, she had some savings and with such savings and other hand loans she entered into agreement of sale dated 11.12.2001 with Smt. Shantavva Veerupaxappa Dhuli and paid Rs.50,000/- towards earnest money. The defendant No.1 in order to pay balance sale consideration she raised mortgage loan of Rs.2,00,000/- in March 2002 in Bailhongal Urban Co-op Bank Ltd., Bailhongal by mortgaging CTS No.2513 and thereafter she adjusted Rs.1,38,000/- from her relatives and paid the entire sale consideration and as such suit property is her self-acquired property. The defendants gave full consent to the original plaintiff to get the job under compassionate ground due to the death of Santram S/o Mallappa Rudrannavar @ Hatti and keeping the same in mind and out of love and affection towards defendant Nos.2 and 3, the defendant No.1 executed a gift deed dated 24.06.2013 and the names of defendant Nos.2 and 3 was also entered to the CTS extract as per entry dated 03.06.2014. By virtue of gift deed dated 24.06.2013, the defendant Nos.2 and 3 have become

absolute owners of suit property and they are in possession of the same from the date of gift deed till today.

9. Counsel for plaintiffs argued that the suit is for partition and separate possession between mother and children and the original plaintiff was the son of defendant No.1 and he died on 01.11.2021. The suit schedule property totally measures 1800 Sq. Feet and relationship is admitted and the deceased plaintiff's father was serving in the Police Department and defendant No.1 has purchased the suit property out of pensionary benefits. It is the contention of defendant No.1 that the suit property is her self-acquired property and her name was depicting in tax assessment extract till 2021. Since defendants are disturbing the peaceful possession and enjoyment, the possession of plaintiffs has to be protected. There is no severance of joint family. Aadhaar Cards, electricity bills are produced to show the possession of plaintiffs over the suit property. The defendants are trying to alienate the suit property in favour of builders. In order to enjoy the fruits of decree, the property has to be protected. Hence, prayed to allow the application. He relied upon **Mamata and others Vs. T. P. Hithendra and another 2022 (4) KCCR 3187**, wherein it has been held that *"Court is required to consider prima facie possession, not prima facie title at the stage of considering I.A. filed U/O.39 Rules 1 and 2 CPC. The trial Court instead of searching for a prima facie case in the matter before it, the trial Court appears to have transgressed in the arena of appreciation of documents to find out the prima facie title with respect to the suit property"*.

10. Counsel for defendants argued that suit schedule property is the self-acquired property of defendant No.1. Ancestral properties are in Chikkodi and they are not included in this suit and suit is bad for non-inclusion of said properties. Defendant No.1 has executed gift deed in favour of defendant Nos.2 and 3 and by virtue of gift deed, the defendant Nos.2 and 3 are in possession of the suit property. Hence, prayed to reject the application.

11. Perused the materials available on record. The plaintiffs have produced the copy of sale deed dated 22.04.2003 wherein the defendant No.1 has purchased the suit property from Smt. Shantavva Veerupaxappa Dhuli for sale consideration of Rs.3,88,000/-. Further, they have produced RTC pertaining to R.S. No.58/1A plot No.24 wherein the name of Shantavva Veerupaxappa Dhuli is mentioned to an extent of 14 Gunthas 72 Annas along with Kumbar Honakareppa Mahadevappa. Further, they have produced the office copy of legal notice which was sent to defendant No.1 by deceased plaintiff seeking for share in the suit property and other agricultural lands. Further, property extract pertaining to suit property is produced wherein the name of defendant No.1 is mentioned as owner and occupier of the property. Further, surviving family members certificate is produced wherein deceased plaintiff and defendants are shown as surviving family members of Santram Mallappa Rudrannavar. Further, they have produced CTS extract and property card pertaining to CTS No.1835/1 wherein the names of defendant Nos.2 and 3 have been entered in the CTS extract as per gift deed executed by defendant No.1 and later CTS Nos.1835/1

and 1835/2 have been sub-divided and the names of defendant Nos.2 and 3 are entered into CTS extract as per partition effected between them.

12. The defendants have produced the tax assessment extract pertaining to suit property, electricity bill and copy of complaint addressed to Commissioner, Belagavi against plaintiff No.1(a) and others. Further, they have produced affidavits of adjacent owners stating that the plaintiffs are not residing in the suit property and they have filed false suit to harass the defendant No.1.

13. On perusal of the materials available on record, it is clear that the defendant No.1 has purchased the suit property as per sale deed dated 22.04.2003 and it is her absolute property. At this juncture, it is relevant to refer Section 14 of Hindu Succession Act, which reads as under :

“14. Property of a female Hindu to be her absolute property. *(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such

property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

As per Section 14 of Hindu Succession Act, the property held by female Hindu is her absolute property. As such, it is clear that the defendant No.1 is the absolute owner of suit property and she has executed gift deed in favour of defendant Nos.2 and 3 and the names of defendant Nos.2 and 3 has been entered in revenue records and the defendant Nos.2 and 3 are in possession of the suit property as owners. Further, the plaintiffs have not produced any documents to show that the suit property is the joint family property and the defendants are trying to change the nature of suit property by demolishing the same. As such, prima facie case for grant of injunction is not at all forthcoming in favour of plaintiffs as there is nothing on record to believe that the defendants are trying to change the nature of the suit property. Therefore without expressing anything on the merits of the case, at this juncture, this Court feels it appropriate to say that the burden is upon the plaintiffs to prove their case so as to entitle them for the relief sought for. But only keeping the aspect of granting of injunction is concerned, this Court is of the opinion that no prima facie case made out by the plaintiffs and no balance of convenience lies in their favour. Therefore, this Court

feels that there is no material to say that if at all the injunction is denied to the plaintiffs, they will be put to irreparable loss or injury. Without saying anything on the merits of this case, I answered Point Nos.1 to 3 in the Negative.

14. Point No.4 : In the present case, the plaintiffs have not made out prima facie case to grant temporary injunction and no balance of convenience lies in their favour. Further, there is nothing on record to show that the plaintiffs will suffer irreparable loss or injury if the injunction is denied. Therefore, the plaintiffs are not entitled to the reliefs sought for. Hence, I answered Point No.4 in the Negative.

15. Point No.5 : For the above discussed reasons, I proceed to pass the following :

ORDER

The interim application No.6 filed by the plaintiffs against the defendants U/O.XXXIX Rules-1 and 2 R/w.Sec.151 of C.P.C. is hereby rejected.

*(Dictated to the Stenographer directly on computer, typed by her, edited & corrected by me & then pronounced in the Open Court on this the **24th day of April-2024.**)*

(Smt. Saroja. M)
Prl. Civil Judge & JMFC, Belagavi.