

KABG040015492023



**IN THE COURT OF THE IV ADDL. CIVIL JUDGE & JMFC,
BELAGAVI**

Present: SHRI. BASAVARAJA THULASAPPA NAYAKA,
B.A.L LL.M.,
IV Addl. Civil Judge & JMFC,
Belagavi.

Dated : This the day of 9th August- 2023

O.S. NO.594/2023

Plaintiff/s : Shri. Nitin S/o. Mahadev Shetty,
Age: 31 years, Occ: Business,
R/o: # 2767/4, Kasai Galli Belagavi.

(By Shri. V.B. Sultanpuri, Advocate)

-Vs.-

Defendant/s: Shri. Rajaram T. Shetty,
Age: 75 years, Occ: Business,
R/o: H.No.11, 1st main, 4th Cross,
Shivaji Nagar, Belagavi – 590 008.

(By Shri. M.N. Kulkarni, Advocate)

I.A. No.I

Applicant/Plaintiff :Shri. Nitin S/o. Mahadev Shetty.

-Vs.-

Opponent/Defendant:Shri. Rajaram T. Shetty.

ORDERS ON IA. No.I FILED U/O. 39 RULE 1 AND 2 R/W SEC. 151 OF CPC :

I.A. No. I is filed by the plaintiff with a prayer to grant an ad-interim temporary injunction to restrain the defendant, his agents, servants or anybody claiming on his behalf from disturbing plaintiff's peaceful possession, use and enjoyment over the suit property.

2. I.A. No.I is accompanied with an affidavit sworn by the plaintiff, wherein it is stated that one Sulochana Maichail Karanjia sold the entire suit schedule premises to defendant No.1 Rajaram Tangavel Shetty and his wife Laxmibai Rajaram Shetty on 15.02.2012 through registered sale deed and they came into possession of the suit schedule property and the plaintiff being the grandson of defendant No.1 Rajaram and Laxmibai was staying with his grandparents and helping them in their bakery business since his childhood and helped the defendant No.1 to earn a lot of properties and he also taken care of his grandparents. Out of love and affection, the defendant and Laxmibai gifted the suit property to him through registered gift deed dated 02.01.2021 and he became the absolute owner the suit schedule property. These being the facts, his father, his brother along with Gajalaxmi Shetty forced the defendant to take back the gifted property from him. Hence, defendant and Laxmibai filed suit bearing O.S. No.75/2021, wherein they got an interim stay restricted him from alienating the suit schedule property. Thereafter, he filed O.S.

No.143/2021 against one Gajalaxmi Shetty and obtained an interim injunction against the defendant in the said matter. Further the defendant and Laxmi Rajaram Shetty executed the lease deed in favour of Bashirahamad Sanadi, Ravikumar Jadhav and Amar Shetty and each of them filed suit for permanent injunction against him bearing O.S. No.938/2021, 939/2021 and 941/2021. Further, the defendant No.1 along with his father and brother have come to the suit property and harassing him and his family members and threatened him not to conduct the business in the suit premises and close down the shutter and hinder his business. The defendant and his henchmen tried to interfere in his peaceful possession, use and enjoyment over the suit property. He has got prima-facie case and balance of convenience leans in his favour. If injunction is not granted, he will be put to untold hardship. On the contrary, if injunction is granted, the defendant will not be put to any hardship. Hence, prayed to allow the I.A. No.I.

3. The defendant has filed objections to the I.A. No.I, wherein he has denied the contents of the application as false and contended that the plaintiff is surrounded with criminals and in order to gulp his valuable property illegally created number of documents. The plaintiff is not in possession of the suit property at any point of time. Further it is contended that at the time of purchase of the suit property, it was an old mud constructed house and he has obtained building permission

and constructed a commercial and residential building consisting of basement, first floor, second floor and third floor. At the time of construction, he has invested his life time savings in the building by selling his agricultural land to the extent of 40 acres of Nelewade, Tq: Khanapur. As he found the shortage of funds at a final stage, he has deemed it proper to lease the portions of the property and in that process he has entered into lease agreements. He is also running a bakery business in Khade bazaar, Belagavi in the name and style as 'Swamy Bakery' for last 72 years and his two sons Mahadev and Jagadish are also used to assist him in bakery business. After the death of his second son Jagadish, he made monthly maintenance to the wife of Jagadish and her two sons and provided education to them. Further the defendant educated the plaintiff and other grandsons. It is contended that the plaintiff took him in confidence and got created the document by concealing the true facts, created a false, fabricated and bogus document styled as 'gift deed' dated 02.01.2021. Further the plaintiff with an oblique intention to take possession of the property has filed a suit in O.S. No.143/2021 and manage to get exparte orders by misrepresentation. Further the plaintiff in order to get revenue records in his name, illegally produced the CTS extract in his name by playing a fraud on the municipal authorities has created assessment list of building and on the basis of the same, created false documents during

the pendency of the suit for declaration in O.S. No.75/2021 and the other suits filed by the respective tenants behind his back and on the basis of the same filed the present suit and obtained the ex parte ad-interim injunction and try to take possession of the suit property and after obtaining injunction has purposely prolonged the matter without serving the notice to him. The plaintiff has purposely has not produced the city survey extract as it clearly reveals that the name of the plaintiff is cancelled in view of serious dispute about the alleged gift deed. The plaintiff has suppressed the number of true facts and not approached this Court with clean hands. The plaintiff is not having prima-facie case and balance of convenience does not leans in his favour. Hence, prayed to reject the application.

4. Heard arguments and perused the records.

5. On perusal of the pleadings, documents and application, the points that arise for my determination are;

1. Whether the plaintiff has made out prima facie case for grant of temporary injunction?
2. Whether the plaintiff proves balance of convenience lies more in his favor?
3. Whether the plaintiffs prove irreparable loss will be caused more to him, if temporary injunction is not granted?
4. What order ?

6. My answer on above points is as follows;

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

7. **Point No.1 to 3** :-These points are taken up together for discussion to avoid the repetition as they require same set of pleadings and documents.

8. The present application is filed seeking to restrain the defendant from interfering with his possession over the suit schedule property. It is the case of the plaintiff that the defendant is his grandfather and Laxmibai is the wife of defendant who is his grandmother. The suit schedule property is the self-acquired property of the defendant and his grandmother laxmibai. The defendant was running a bakery business in Khade Bazar since his young days. Further contend that his father Mahadev had got second marriage and left the plaintiff and his brother. Himself and his brother were broughtup by the defendant and Laxmibai the W/o. Defendant. The plaintiff was helping the defendant in the bakery business of the defendant and spent most of time in the business place to help the defendant. Further contend that the defendant and his wife Laxmibai after looking into love,

affection and dedication shown by the plaintiff, decided to gift the entire suit property to him out of love and affection and executed registered gift deed in favor of the plaintiff in respect of the suit property. The defendant and Laxmibai Rajaram Shetty got themselves checked at their local family consultant Dr. Philip Vaz on 0201.2021 and got medical fitness certificate and executed registered gift deed. After the said gift deed, the plaintiff took over the complete possession of the suit property and look after the suit property. further contend that his brother and his father along with Gajalaxmi Shetty questioned the defendant and asked the defendant to take back the gifted the suit property as they did not want the plaintiff to enjoy the same. The said person forced the defendant to file suit bearing O.S. No.75/2021 before the IV Addl. Sr. Civil Judge & JMFC challenging the gift deed executed in favour of the plaintiff. Further contend that in order to harass the plaintiff, the defendant and his grandmother Laxmibai executed three lease deeds in favour of Sanadi, Ravikumar and Amarshetty with respect to three different parts of suit property in the month of March-2021 after execution of the gift deed. The said persons in whose favor the lease deeds are executed have filed a suit against the plaintiff and seeking permanent injunction and two of them succeeded to obtain ex parte injunction against the plaintiff. The plaintiff contend that he is doing bakery business by name 'New Swamy Bakery' in the suit

property and he is residing along with his wife and children in the suit schedule premises. The defendants are trying to interfere with his possession and enjoyment over the suit schedule property.

9. The defendant admitted that the suit schedule property is his self-acquired property. Further admitted the relationship and further admitted that the plaintiff and his brother were staying with him and he looked after the plaintiff and his brother. The defendant denied the execution of the gift deed dated 02.01.2021 in favour of the plaintiff. The defendant contend that the plaintiff got executed the said gift deed fraudulently by misrepresenting him. They have challenged the gift deed before the IV Addl. Sr. Civil Judge. Further denied that in order to harass the plaintiff, he has executed lease deed in favor of three different persons in respect of different parts of the suit property. The defendant contend that they being the owners of the suit property has executed lease deed in respect of the suit property. Further denied the possession of the plaintiff over the suit property.

10. The plaintiff's counsel relied on the registered gift deed and argued that the defendant has executed registered gift deed in favour of plaintiff and he was put in possession of the suit property. Further relied on the assessment list to show his possession and also relied on the electricity bills and Gas connection documents and registration certificate of Swamy bakery to show his possession over the suit

property. Further relied on photos and contend that the defendant is trying to interfere with his possession over the suit property. The plaintiff's counsel argued that the defendant has executed lease deed in March after execution of the registered gift deed only to harass the plaintiff. The said lease deeds are created colluding with others. The defendant has no right and possession over the suit schedule property to execute the lease deed.

11. The defendant's counsel argued that the plaintiff fraudulently by misusing the faith has got executed the registered gift deed in his favour. Further the title claimed by the plaintiff over the suit property by virtue of the gift deed is a litigious title. The defendant has challenged the gift deed within one month of the execution of the registered gift deed. Further argued that the electricity bills relied on by the defendant are of the year 2023 which are created by the plaintiff. Further relied on the electricity bills of the year 2022 to show that the defendant is in possession and enjoyment of the suit property. Further relied on CTS extract to show that their name is still appearing in the CTS extract as owners. Further relied on plain card and argued that the name of the plaintiff is cancelled which was entered by virtue of the created registered gift deed. Further relied on the suit instituted by the tenant against the plaintiff seeking permanent injunction and argued that the tenants are in possession of the suit property as tenants under

him. In this regard, relied on the lease deed and rent agreements. Further the defendant's counsel argued that the plaintiff within twenty days of the fraudulent gift deed has executed sale agreement in respect of the suit to Suresh who is none other than father-in-law of the plaintiff, this clearly shows malafide intention of the plaintiff to snatch the property of the defendant herein who is aged of 81 years . The defendant counsel relied on the decision argued that the plaintiff has to prove lawful possession and not a litigious possession.

12. The plaintiff relied on the following decisions:

1) AIR 1984 P & H 262 (Sadhu Ram V/s. Gram Panchayat, Pastana)

2) AIR 1972 SC 2299 (M. Kallappa Setty V/s. M.V. Lakshminarayana Rao)

3) AIR 2004 All 131 (Santoo V/s. Jagannath)

4) AIR 1996 SC 3377

13. The defendant relied on the following decisions:

1) ILR 1991 Kar 4544 (Sanjeevamma V/s. Annyappa)

2) AIR 1966 Mysore 75 (Mahadevayya Veerabhadrayya Hiremath V/s. The state of Mysore)

3) The Appellate Civil(The Banashankar Temple through Vithal Rao V/s. Viswanath and another)

14. It is not in dispute that suit property is the self-acquired property of the defendant. Further it is also not in dispute that the

plaintiff was brought up under the care of the defendant and his wife Laxmibai. According to the plaintiff, he was actively involved in bakery business of the defendant. Whereas, defendant contend that the plaintiff as well as other children of his son are also involved in the bakery business. The plaintiff contend that out of love and affection, the defendant has executed the registered gift deed in his favour. On the other hand, defendant contend that, the said gift deed fraudulently got executed by him by misrepresenting him. It is pertinent to note that the defendant has challenged the gift deed within one month of the execution of the said gift deed alleging that the said gift deed was fraudulently got executed by the plaintiff. The plaintiff on the one hand claim that the defendant out of love and affection towards him has executed the gift deed in his favour. Whereas on perusal of sale agreement executed by the plaintiff in favor of one Suresh , it appears that immediately after execution of the gift deed, plaintiff entered into sale agreement in respect of the suit property within 20 days with one one Suresh who according to defendant is the father-in-law of the plaintiff. The defendant's counsel argued that they have challenged the gift deed and the title claimed by the plaintiff over the suit property is litigious title , based on the said gift deed, the possession of the plaintiff cannot be presumed. It is pertinent to note that the defendant placed before the Court the plain card of the suit property, wherein the name of

the plaintiff entered by virtue of the gift deed was cancelled. Further, the defendant relied on the electricity bills to show that he is paying electricity bills. Further relied on the lease deeds to show that the suit property was let for lease by the defendant. The plaintiff relied on the gift deed and the electricity bills which is of the year 2023 and Gas connection and bakery licence to show that he is in possession and enjoyment of the suit property. It is pertinent to note that, the plaintiff claims that he is running the bakery by name New swamy bakery, whereas, the registration certificate produced by the plaintiff is by name only Swamy bakery. The defendant contend that he is running the bakery by name Swamy bakery. It is not in dispute that the defendant is carrying bakery business. The plaintiff has not placed any document to show that he is running bakery in the suit premises by name New swamy bakery except the photos. It is pertinent to note that the defendant is none other than the grandfather of the plaintiff who is aged 81 years. The defendant has challenged the gift deed within one month from the date of the alleged gift deed. Further the conduct of the plaintiff immediately within 20 days of the execution of the gift deed entering into the sale agreement with one Suresh who according to the defendant is the father-in-law of the plaintiff in respect of the suit property creates cloud over the title and the possession of the plaintiff over the suit schedule property by virtue of the gift deed . Such being

the case, in the present facts of the case the plaintiff failed to show that he was put in possession of the suit property by virtue of the gift deed. The decision relied by the plaintiff is not applicable to the present case on hand. The plaintiff has failed show prima facie case, balance of convenience and irreparable hardship in his favour. Hence, I answer Point Nos. 1 to 3 in the **Negative**.

15. **Point No.4:-** In view of above discussion, I proceed to pass the following;

ORDER

***IA No. 1 filed by the plaintiffs U/O. 39 Rule 1
and 2 R/w sec. 151 of CPC is hereby rejected.***

No order as to costs.

***(Dictated to the Judgment Writer directly on computer, corrected and then
pronounced by me in the open Court on 9th day of August, 2023)***

**(BASAVARAJA THULASAPPA NAYAKA)
IV Addl. Civil Judge & JMFC,
BELAGAVI.**

