

**IN THE COURT OF THE CIVIL JUDGE AND JMFC,
SIRUGUPPA**

Dated this the 07th day of September 2023

Present:

Sri. HAJIHUSENSAB YADAWAD B.Com, LL.B, (Spl.)
Civil Judge & JMFC,
Siruguppa.

O.S. No. 94/2023

Plaintiff: K.Veeresh

V/s

Defendants: Chatla Basappa & another

Parties to I.A.No. II & III

Applicant: K.Veeesh
Plaintiff S/o K.Basappa,
Aged about 32 years,
R/o Hatcholli village,
Siruguppa Taluk,
Ballari District.

(By **Sri. T.S.K. -Advocate**)
V/s

Opponents: Smt.Neelamma,
Defendant No.2 W/o Alam Basha,
Aged about 36 years,
Agriculturist,
R/o Vala Ballari village,
Siruguppa Taluk,
Ballari District.

(By Sri.D.S. -Advocate)

COMMON ORDERS ON I.A.No.II AND III FILED U/O XXXIX**RULE 1 and 2 R/W. Sec.94 & 151 of CPC**

The counsel for Plaintiff filed IA No.II U/O XXXIX Rule I and 2 R/w. Sec. 94 & 151 of CPC seeking Temporary Injunction in favour of plaintiff and against the defendant No.2 and her agents, P.A. Holders from alienating the suit schedule property till disposal of the suit.

The counsel for Plaintiff filed IA No.III U/O XXXIX Rule I and 2 R/w. Sec. 94 & 151 of CPC seeking Temporary Injunction in favour of plaintiff and against the defendant No.2 and her agents, P.A. Holders from disturbing the peaceful possession of plaintiff over suit schedule property till disposal of the suit.

2. Both the applications are accompanied with an affidavit of plaintiff wherein he contended that the defendant No.1 is the owner of suit property and he agreed to sell the suit property in favor plaintiff and after due talks, the said defendant No.1 executed registered agreement of sale deed with possession dated 24/05/2016 in favor of plaintiff for total sale consideration amount of Rs. 3,30,000/- and has received

entire sale consideration amount of Rs. 3,30,000/- on the date of execution of agreement of sale. The defendant No.1 was agreed to execute the registered sale deed after securing the relevant documents whenever plaintiff calls for execution of sale deed. In spite of demands by the plaintiff the defendant No.1 postponed to execute registered sale deed. Later the plaintiff learnt and obtained RORs of suit property and surprised to see that the defendant No.1 had executed Gift Deed in favor of his Daughter-in-law who is defendant No.2 dated 02/01/2018.

3. In spite of requests of plaintiff, the defendants are postponing the execution of sale deed. Therefore, the plaintiff issued legal notice to the defendants dated 12/11/2022. The said notice served upon defendants 16/11/2022. But the defendant neither replied to notice nor executed the sale deed. Hence, the plaintiff constrained to file this suit. Further it is stated that the defendant No.2 is under intention to alienate the suit property and also disturbing the possession of plaintiff based upon gift deed executed by defendant No.1 in her favor.

Hence, the plaintiff filed above applications and on these grounds he prayed to allow the applications.

4. On the contrary the defendants have appeared before this court through their counsel and amongst them the defendant No.1 has filed written statement and the defendant No.2 has adopted the same WS by way of filing of separate memo. Further they have filed separate memo to adopt the WS as objections to IA No. III. It is contended in written statement that the suit of plaintiff is not maintainable and the defendants have denied the contentions of plaintiff as averred in the plaint. They have admitted relationship between defendant No.1 and 2 and contended that the defendant No.2 is the absolute owner of suit property and the defendant No.1 never executed agreement of sale in favor of plaintiff dated 23/05/2016. It is their contention that the defendant No.1 had availed loan of Rs. 3,30,000/- from the plaintiff as hand loan, at that time the plaintiff demanded for security for the said loan. Hence, the defendant No.1, instead of executing MORTGAGE DEED had executed REGISTERED AGREEMENT OF SALE WITH POSSESSION in favor of plaintiff. But the

defendant No.1 does not aware of the contents of the agreement as he is illiterate and has no worldly knowledge. The defendants are not having other propoertis except suit property. Further it is stated that the suit property is ancestral property of defendant No.1 who is having wife by name Smt. Ayyamma and children by name (i)Krishnaiah, (ii) Kalngappa, (iii) Mallikarjun, (iv) Neelamma and (v) Ramesh. Therefore, the defendant No.1 alone has no right to sell or alienate the suit schedule property. The suit property values more than Rs. 10 lakh and hence no question would arise to sell it megar amount of Rs. 3,30,000/-. The defendant No.1 has executed registered gift deed in favor of defendant No.2 dated 02/01/2018 and accordingly the name of defendant No.2 has mutated to the suit schedule property by virtue of MR No. 14/2018-19. Hence, it shows that the defendant No.1 is having no intention to alienate suit property to the plaintiff. The suit of the plaintiff is barred by limitation as it has been filed after lapse of 7 years of execution of alleged agreement of sale. The plaintiff is never in possession over suit property. The plaintiff has filed suit by suppressing true and material

facts. On these grounds, the defendants prayed to dismiss the applications as well as to dismiss the suit.

5. Heard both sides. Perused the materials available on records.

6. The following common points arose for my consideration.

1. Whether the prima facie case lies in favor of plaintiff?

2. Whether balance of convenience lies in favor of plaintiff?

3. Whether any irreparable injury or hardship which cannot be compensated in terms of money would be caused to the plaintiff in the event of refusal of temporary injunction as sought for?

4. What order?

7. My findings on the above points are as follows:

Point Nos. 1 to 3 : In the **Affirmative.**

Point No. 4 : As per final order
for the following:

REASONS

8. POINT Nos. 1 to 3: The Point Nos.1 to 3 are interlinked and hence to avoid the repetition the same are taken-up together for discussion. The existence of prima facie case is condition precedent, it is true that prima facie case is different from prima facie title, the prima facie case includes maintainability of the suit by considering the aspect of prima facie case, the maintainability has been looked into.

9. In order to establish prima-facie case, the plaintiff has relied upon the registered agreement of sale executed by the defendant No.1 dated 24/05/2016. The said agreement was executed in favor of plaintiff agreeing to sell the suit property in favor of plaintiff for the sale consideration amount of Rs. 3,30,000/- wherein the defendant No.1 has received entire sale consideration amount of Rs. 3,30,000/-. However, the defendant No.1 executed the registered GIFT DEED in favor of his daughter-in-law dated 02/01/2018 and thereby the suit property has already been mutated in the name of defendant No.2. Now the defendants are not ready to execute the sale

deed in terms of agreement of sale in favor of plaintiff. However, the defendant No.1 is not ready to perform his part of contract. Hence, the plaintiff has approached this court for proper relief. Further it is contended by the plaintiff that, the defendant No.2 is trying to alienate the suit property and also disturbing the possession of plaintiff based on the gift deed executed by the defendant No.1. Therefore, the plaintiff has filed present applications and prayed to allow it.

10. On the contrary, it is contention of defendants that the defendant No.1 had availed hand loan of Rs. 3,30,000/- from the plaintiff. For the security of said loan, on the demand of plaintiff, the defendant No.1 instead of executing mortgage deed had executed agreement of sale. But the defendant No.1 is not having knowledge about the contentions taken in the agreement of sale. Further the suit property is ancestral property and the defendant No.1 alone is not having any right to sell or alienate the suit property.

11. This is a peculiar case wherein the defendants submitted that the defendant No.1 for the security of hand loan, had

executed agreement of sale instead of mortgage deed. But nowhere in the written statement the defendants have stated about the repayment of said hand loan amount. The defendants have not mentioned whether the said hand loan was repaid or not.

12. However, the agreement of sale is registered document wherein the possession of suit property has already been handed over in favor of plaintiff on the date of execution of sale deed. After the execution of alleged agreement of sale, the defendant No.1 entered into registered gift deed in favor of defendant No.2. According to the defendants, if at all the defendant No.1 borrowed the loan from the plaintiff and executed mortgage deed or agreement of sale, then what prevented him to repay the said hand loan amount to the plaintiff. Without repaying the hand loan amount to the plaintiff, the defendant No.1 executed gift deed in favor of defendant No.2 who is none other than the daughter-in-law of defendant No.2. If at all the version of defendant No.1 is correct about borrowing hand loan from the plaintiff, then what prevented the plaintiff to mention about the

repayment/non repayment/part payment of the said hand loan amount advanced by the defendant No.1. But in the present case, the defendants simply submitted their defence about borrowing of hand loan from the plaintiff, but have not mentioned about the repayment or non repayment of said hand loan. Therefore on the records available before this court it clearly goes to show that without executing sale deed or repayment of hand loan to the plaintiff, the defendant executed gift deed in favor of defendant No.2. Now the defendant No.1 to escape from his responsibility, has executed gift deed in favor of defendant No.2. Now it is the contention of plaintiff that the defendant No.2 is disturbing his possession and also is in hurry to alienate the suit property. If the defendant No.2 succeeds in her attempt, then the very purpose of filing of suit would be frustrated. If at all they succeeded in further alienation, it would amount to multiplicity of proceedings. However, to protect and safeguard the suit properties and to protect it from further alienation, it would be proper to restrain the defendant No.2 from further alienation of suit property in favor of 3rd party and also to

restrain her from disturbing the possession of plaintiff over suit property. As it is the case of plaintiff that the defendant No. 1 had executed the agreement of sale in his favor, therefore one fair opportunity has to be provided to the plaintiff to establish his case. Till then preserving the suit property in-tact is necessary. At this juncture prima-facie case should not be descended into prima-facie title. If at all the defendants succeed in their acts, then the very purpose of filing of present suit and application would be frustrated and by allowing the present application, there will be no harm and prejudice to the defendants. Therefore, until deciding the suit finally, it is just, proper and necessary to restrain the defendant No.2 from alienating the suit property in favour of others and also disturbing the possession of plaintiff over suit property. Hence, in view of totality of the above circumstance, I answer **Point Nos.1 to 3 in the Affirmative.**

13. POINT No. 4: In view of my answer on point No.1 to 3 I proceed to pass the following;

ORDER

The IA No.II filed by the Plaintiff U/O 39 Rule 1 and 2 R/w. Sec. 94 & 151 of CPC is hereby allowed.

The Defendant No.2 is hereby restrained from alienating suit property in favor of anybody till final disposal of this suit.

The IA No.III filed by the Plaintiff U/O 39 Rule 1 and 2 R/w. Sec. 94 & 151 of CPC is hereby allowed.

The Defendant No.2 is hereby restrained from disturbing the possession of plaintiff over suit schedule property till final disposal of this suit.

No order as to costs.

(Typed by me directly on computer, corrected and then pronounced by me in open Court, on this 7th day of September, 2023)

**(HAJIHUSENSAB YADAWAD)
Civil Judge & JMFC.,
Siruguppa.**