

KABK200008162024



**IN THE COURT OF ADDL SENIOR CIVIL JUDGE & JMFC
At: MUDHOL.**

PRESENT

Sri. Vivek Gramopadhye, B.S.L.,L.L.B.
Addl.Senior Civil Judge & JMFC.,
Mudhol.

ORIGINAL SUIT NO:116/2024

DATED: THIS THE 21st DAY OF January 2026

PLAINTIFF/S:

- Shri.Venkappa S/o Hanamappa B-Patil**
Age: 62 years, Occ: Agriculture,
R/o: Naganapur, Tq: Mudhol,
Dist: Bagalkot.

(Rep. by Shri.B.C.H.Advocate)

- V/s -

DEFENDANT/S:

- Shri.Sangappa S/o Venkappa B-Patil**
Age: 27 years, Occ: Agriculture,
R/o:Naganapur, Tq: Mudhol,
Dist: Bagalkot.

(Rep. By Shri.B.H.K/T.R.P.Advocate)

ORDERS ON IA NO.I & III

**APPLICANT/S : SHRI.VENKAPPA S/O HANAMAPPA
B-PATIL**

V/S.

OPPONENT/S : SHRI.SANGAPPA S/O VENKAPPA B-PATIL

ORDERS ON IA NO.I & III

Learned advocate for the plaintiff has filed IA No.I under Order XXXIX Rule 1 and 2 of C.P.C seeking to restrain the defendant from causing any sort of obstruction and disturbing the peaceful possession and enjoyment of property bearing Survey No.44/5 measuring 32 guntas situated at Naganapur Village, Madhol Taluka, till disposal of the suit.

2. In the affidavit accompanying the application, it is stated that the suit is filed seeking for the relief of declaration of title and consequential relief of injunction. The plaintiff is the owner and actual possession and enjoyment of the suit property which is allotted to the plaintiff in family partition in R.S No.44/2 to the extent of 3 acres 8 guntas. With respect to the said property, the defendant, his mother and sister filed suit in O.S No.31/2012 before this court seeking for the relief of partition and the said suit is decreed as per Judgment and Decree dated 15.06.2015. It is further stated that the plaintiff was not feeling well and he was suffering from paralysis in the

month of September 2023 and he was not in a position to understand the consequences of things being done and could not read and sign and hear. Taking disadvantage of the said fact, the defendant took the plaintiff to the Sub-Registrar Office to get his thumb impression on a document which the plaintiff later on came to be known as a registered gift deed created without the knowledge of the plaintiff and without his free will and consent and the said deed is created by the defendant by playing fraud upon him and by causing undue influence and by misrepresentation of the facts. Therefore, the said deed is not valid and it is not binding upon the plaintiff's property.

3. It is further stated that the defendant intended to grab the property belonging to the plaintiff illegally and unlawfully and has created the said gift deed and on the basis of said gift deed got his name entered with respect to Survey No.44/5 vide M.E No.H-13/2023-24. It is further stated that on the basis of the said false deed, the defendant has started to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. The plaintiff is now cultivating the suit land along with his brothers and has requested several times to the defendant not to do illegal acts through elderly persons, but the defendant has continued to interfere with the plaintiff's peaceful possession and enjoyment of the suit property.

4. It is further stated that the defendant has obtained a fraudulent decree in O.S No.31/2012 and has obtained 3/4th share leaving 1/4th share to the plaintiff and he is not at all looking after the plaintiff and to grab the property which is left to the share of the plaintiff also, has got created the gift deed which is not a genuine and it is null and void document. It is further stated that it is the brothers of the plaintiff who are taking care of the plaintiff and the plaintiff has not fully recovered from the paralysis and is still under treatment and the defendant is not at all taking care of the plaintiff and has got created the gift deed which is not at all binding upon the plaintiff and therefore, the plaintiff has filed the suit seeking for the relief of declaration of title and consequential relief of declaration.

5. It is further stated that it is the plaintiff who is in possession and enjoyment of the suit property as its absolute owner. However, the defendant is trying to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and as the plaintiff has got prima-facie case, the balance of convenience leans in favour of the plaintiff and as it is the plaintiff who will suffer irreparable loss and injury if TI as sought for is not granted, he seeks for allowing of the application.

6. Learned advocate for the plaintiff has also filed IA No.III under Order XXXIX Rule 1 and 2 of C.P.C. seeking to restrain the defendant from alienating and transferring the suit property till disposal of the suit.

7. In the affidavit accompanying contentions taken in IA No.I are reiterated and further it is stated that on the basis of the said fraudulent gift deed, the defendant is trying to alienate the suit property and create third party interest over the suit property and if the defendant succeeds to do so, it is the plaintiff who will suffer irreparable loss and injury and hence, seeks for allowing of the application of the application restraining the defendant from alienating or creating third party rights over the suit property.

8. The defendant has appeared through his counsel and has filed memo adopting the written statement as objections to IA No.I and IA No.III. In the written statement, the devolution of the property is admitted and filing of suit in O.S No.31/2012 and decreetal is admitted, but the rest of the averments made in the plaint are denied. Further, it is stated that in F.D.P No.2/2006, the plaintiff has got his legitimate share in the joint family property and the defendant has also got his legitimate

share in the joint family property and their respective rights were crystallized.

9. It is further stated at paragraph No.12 that the plaintiff had availed loan from Karnataka Vikas Grameen Bank, Lokapur branch and another bank and to discharge the said loans taken from the said banks and as the plaintiff was suffering from paralysis, for his treatment he was in need of financial assistance and accordingly the elderly persons asked the defendant to discharge the dues and to arrange money by disposing the suit property and accordingly the plaintiff with his free consent and will agreed to gift the suit property to the defendant. The defendant at the advise of elderly persons has agreed to the said arrangement and he had paid the loan dues to Karnataka Vikas Gramina Bank, Lokapur branch and the other bank and has also spent huge amount for the treatment of the plaintiff. Therefore, as per the settlement, the plaintiff out of his free wish and will, has executed a registered gift deed in favour of the defendant on 16.12.2023 before Sub-Registrar, Mudhol.

10. The said gift deed is executed by the plaintiff in favour of the defendant, out of love and affection and the defendant is in possession and enjoyment of the said property and the question of playing fraud upon the plaintiff to get the said gift

deed executed does not arise at all in view of the arrangements as stated above and hence, there is no cause of action to file the suit and therefore, seeks for dismissal of the applications.

11. Heard learned advocate for the plaintiff and learned advocate for the defendant.

12. The following points that arise for my consideration:-

IA No.I

1. Whether the plaintiff proves that he has prima-facie case in his favour ?
2. Whether the plaintiff proves that the balance of convenience leans in his favour?
3. Whether the plaintiff proves that he will suffer irreparable loss and injury if T.I as sought is not granted?

IA No.III

4. Whether the plaintiff proves that he has prima-facie case in his favour ?
5. Whether the plaintiff proves that the balance of convenience leans in his favour?
6. Whether the plaintiff proves that he will suffer irreparable loss and injury if T.I as sought is not granted?
7. What order?

13. My answer to the 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 Affirmative

Point No.5 : In the Affirmative

Point No.6 : In the Affirmative

Point No.7 : As per the final order
for the following:

REASONS

14. **Point No.1 :-** Learned Advocate for the plaintiff submits that it is the plaintiff who is in possession and enjoyment of the suit property and admittedly it is the plaintiff who is the owner of the suit property and in spite of knowing about the ownership of the plaintiff who has got rights in the property by virtue of collusive suit filed by the defendant along with his mother and sister, the defendant who seeks to grab the only property which is left to the share of the plaintiff has got executed gift deed by playing fraud upon the plaintiff when he was undergoing treatment for the paralysis.

15. Therefore, it is contended that the plaintiff is in lawful possession and enjoyment of the suit property as its absolute

owner. The defendant has no manner of right, title, or interest in the suit property. Despite the same, the defendant is making deliberate attempts to interfere with the plaintiff's peaceful possession and enjoyment, is trying to dispossess the plaintiff by unlawful means, and is also attempting to alienate the suit property with an intention to defeat the lawful rights of the plaintiff. In view of the said conduct, the learned counsel seeks for allowing of the applications.

16. In support of his contention, Learned Advocate for the plaintiff draws my attention to the record of rights of R.S No.44/5 for the year 2023-2024, the mutation entry No.38/2009-10, H-21/2018-19, H-23/2019-20, the certified copy of the gifted dated 16.12.2023, mutation entry No.H-13/2023-24. Further, he draws my attention to the M.R.I brain scan dated 21.01.2023 and 02.09.2023 and prays for allowing of the application.

17. On the other hand, Learned advocate for the defendant submits that it is the defendant who has spent the amount for treatment of the plaintiff and it is the defendant who has repaid the loans taken by the plaintiff in various financial institutions and private persons and as the plaintiff is having love and affection towards defendant due to the care taken by the defendant, the plaintiff has executed the gift deed in favour

of the defendant and by virtue of the said gift deed, it is the defendant who is in possession and enjoyment of the suit property and submits that by virtue of the gift deed the defendant has become the absolute owner of the suit property and hence, seeks for dismissal of the applications.

18. It is relevant to note that the devolution of the property is not in dispute. It is not in dispute that the R.S No.44/2 was measuring 3 acres of 8 guntas and in a partition the property came to the share of plaintiff and the defendant, his mother and his sister filed O.S No.31/2012 seeking for the relief of partition and separate possession and on the basis of preliminary decree in the said suit Final Decree Proceedings was initiated and in F.D.P No.2/2016, the rights of the parties got crystallized and the suit property bearing R.S No.44/5 measuring 32 guntas has fallen to the share of the plaintiff.

19. The bone of contention in the present suit is with respect to the gift deed dated 16.12.2023. The plaintiff's main contention is that he is in possession and enjoyment of the suit property and in-spite of knowing the said fact, the defendant has got executed the gift deed only to usurp the property. However, the very document produced by the plaintiff i.e the registered gift deed, mutation entry and record of rights clearly goes to show prima-facie that the possession is handed over to

the defendant and it is the defendant who is in possession and enjoyment of the suit property as on the date of filing of the suit. Though the contention is taken by the plaintiff that he is in possession and enjoyment of the suit property, nothing is produced by the plaintiff to substantiate the same, whereas on perusal of the Gift Deed and revenue documents it prima facie appears that the defendant is in possession of the property and therefore, as far as I.A.No.I is concerned, plaintiff is not able to substantiate his case.

20. However, it is relevant to note that by filing I.A. No. III, the plaintiff is seeking to restrain the defendant from alienating the suit property and from creating third party rights therein. In this regard, the plaintiff has produced documents to show that at the time of execution of the gift deed, he was suffering from paralysis, and the said fact is also admitted by the defendant in the written statement. Therefore, the mental and physical condition of the plaintiff as on the date of execution of the gift deed is a matter which requires adjudication at the stage of trial on the basis of evidence. It is further relevant to note that the plaintiff has specifically challenged the very execution and validity of the gift deed. If, during the pendency of the suit, the defendant is permitted to create third party rights on the strength of the impugned gift deed, it would not only cause irreparable loss and injury to the plaintiff but would also result

in unnecessary complication of proceedings by dragging innocent third parties into the litigation.

21. Therefore, in the present facts and circumstances of the case, I am of the opinion that as far as IA No.I seeking to restrain the defendant from disturbing the plaintiff's peaceful possession and enjoyment of the suit property, the plaintiff has failed to substantiate prima-facie case. However, with respect to IA No.III seeking to restrain the defendant from alienating and creating third party rights over the suit property the plaintiff is able to substantiate his prima-facie case and therefore, I answer **Point No.1 in the Negative** against the plaintiff and **Point No.4 in the Affirmative** in favour of the plaintiff.

22. **Point No.2 and 3:-** As far as IA No.I is concerned, the plaintiff has failed to substantiate prima-facie case, that he is in possession and enjoyment of the suit property. With respect to above aspect, it is relevant to note the dictum of Hon'ble High Court of Apex Court in the case of ***Kashi Math Samsthan and Another V/s. Srimad Sudhindra Thirtha Swamy and Another*** reported in **2010(1) SCC 689** wherein the Hon'ble Court has observed as under:

“16. It is well settled principle of law that in order to obtain an order of injunction, the party who

seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, keeping this principle in mind, let us now see whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court.”

23. On perusal of the said dictum and applying it to the facts and circumstances of the case, I am of the opinion that with respect to IA No.I, as the plaintiff has failed to substantiate prima-facie case, the question of holding that the balance of convenience leans in favour of the plaintiff or that it is the plaintiff who will suffer irreparable loss and injury if T.I as sought for is granted does not arise. Moreover, there is a registered document which is produced by the plaintiff himself which clearly resites with respect to possession being handed over to the defendant and therefore, at this stage I am of the

opinion that the balance of convenience leans in favour of the defendant and it is the defendant who will suffer irreparable loss and injury, if the interim relief as sought in IA No.I restraining the defendant from disturbing the peaceful possession and enjoyment of the suit property is granted and hence, I answer **Point No.2 and 3 in the Negative** against the plaintiff.

24. **Point No.5:-** As discussed in point No.4, the plaintiff is able to substantiate prima-facie case and if the defendant on the basis of the gift deed which is assailed by the plaintiff in this suit alienates or creates third party rights over the suit property, it is the plaintiff who will be put to irreparable loss and injury as it will result in unnecessary multiplication of proceedings and hence, I answer **Point No.5 in the affirmative** in favour of the plaintiff.

25. **Point No.6:-** The plaintiff is able to substantiate prima-facie case that if the defendant alienates the suit property or creates third party rights over the suit property and therefore, I am of the opinion that in the present facts and circumstances of the case it is the plaintiff who will suffer irreparable loss and injury if TI as sought for in I.A.No.III restraining the defendant from alienating and creating third party rights over the suit

property is not granted and hence, I answer **Point No.6 in the affirmative** in favour of the plaintiff.

26. **Point No.7:-** Therefore, I proceed to pass following,

ORDERS

IA No.I filed under Order XXXIX Rule 1 and 2 of C.P.C seeking to restrain the defendant from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff is hereby dismissed.

IA No.III filed under Order XXXIX Rule 1 and 2 of C.P.C seeking to restrain the defendant from alienating and creating third party rights over the suit property is hereby allowed.

The defendant is hereby temporarily restrained from alienating or creating third party rights over the suit properties till disposal of the suit.

No orders as to costs.

(Dictated to the Stenographer, transcribed by her, transcript revised by me, corrected, signed & then pronounced in the Open court on this the **21st day of January 2026**)

(VIVEK GRAMOPADHYE)
**Addl. Senior Civil Judge & JMFC,
Mudhol.**

