

**IN THE COURT OF SENIOR CIVIL JUDGE, HUNAGUND**

**AT: HUNAGUND**

Present:

**Sri. Hanamantarao R.Kulkarni,**  
B.Com., LL.B.,

Senior Civil Judge & JMFC, Hunagund.

**O.S. No.228/2023**

Dated this the 3<sup>rd</sup> day of April, 2025.

1. Smt.Mahantamma W/o Sharanabasava Sunakal and others  
...**Plaintiffs**

**-Versus-**

1. Sangappa S/o Veerabhadrapa Iddalagi and another  
... **Defendants**

**I.A. No.I**

1. Veeresh S/o Sangappa Iddalagi  
...**Applicant/  
Plaintiff no.2**

**-Versus-**

1. Mudappa S/o Veerabhadrappa Iddalagi  
...**Opponent/  
Defendant no.2**

(By Smt.S.A.H., Advocate for the Plaintiffs)

(By Sri.U.S.S., Advocate for the defendant no.2)

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**ORDER ON I.A. NO. I**

1. I.A.No.I is filed by the plaintiff no.2 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking to restrain the defendant no.2 or his men or agents or anybody claiming through him from alienating and creating charge over the suit property till the disposal of the suit.

2. The learned Counsel for the defendant no.2 has filed the written statement and he has also filed memo that he has adopted the contents of the written statement as objections to the said application.
3. I have heard the learned Counsel for the plaintiffs. I have also heard the learned Counsel for the defendant no.2.
4. On perusal of the records of the case, the following points would emerge for my consideration:
  1. Whether the plaintiff no.2 has made out a prima-facie case?
  2. Whether the balance of convenience tilts in favour of the plaintiff no.2?
  3. Whether the plaintiff no.2 would be put to irreparable loss if the temporary injunction is not granted?
  4. To what order?
5. My findings on the above points are as under:
  1. in the affirmative.
  2. in the affirmative.
  3. in the affirmative.
  4. As per final order for the following:

## **REASONS**

6. **Point Nos.1 to 3:** I have taken these three points together for my common discussion as they are inter-linked with each other.
7. In an affidavit appended to I.A.No.I, it is stated by the plaintiff no.2 that the suit property is the ancestral property of the plaintiffs' and defendants and the said property was earlier standing in the name of propositus Sangappa S/o Sharanappa Iddalagi and he has died intestate leaving behind his minor sons by name Veerabhadrappe, Basalingappa, Mahantappa, Sharanappa and Basappa and his wife by name Sidhavva W/o Sangappa Iddalagi was also the class I heir along with these five minor children. He has further stated that she was appointed as minor guardian to these five children and after the death of propositus the name of his legal heirs was entered in the revenue records by virtue of vardi dated 11/04/1959. He has further stated that there was a partition in between the legal heirs of the deceased Sangappa S/o Sharanappa Iddalagi after attaining the majority in respect of the joint family property and the suit property in the year of 1984. He has further stated that the suit property was allotted to the share of Sangappa S/o Veerabhadrappe Iddalagi and the partition was only for the convenience of the family and for getting the agricultural benefits given by the Government. He has further stated that the defendant no.1 was not the absolute owner of this property and the suit property is an undivided ancestral property and he has created the gift deed dated 30/03/2017 and the said gift deed

was not for any pious purpose and it was not executed out of love and affection and it is the outcome of the fraud played by the defendant no.2 on the defendant no.1 and the consent of the other co-owners and coparceners was absolutely absent in the alleged gift deed. He has further stated that the alleged gift deed is not binding on his legitimate share and the name of the defendant no.2 is entered in the records and he is trying to alienate the suit and if he alienates the property he will be put to untold hardship which cannot be compensated in terms of money. Hence, the instant application.

8. The defendant no.2 has filed the written statement. He has contended that as per gift deed the suit property is the self acquired property of him. He has further contended that the suit property is not the joint family property and he has denied the averments of the plaint and accordingly, among other grounds prays to reject the application.
9. In view of the rival contentions put forth by the plaintiff no.2, now, let me see as to whether the plaintiff no.2 has made out a prima facie case in his favour. It is pertinent to note that the plaintiff no.2 has stated that the suit property is the ancestral and joint family property of the plaintiffs and the defendants and the defendant no.1 is not having any power to gift the suit property to the defendant no.2. On the other hand, the defendant no.2 has contended that the suit property is the self acquired

property of him and he is the absolute owner of this property. Further, it is pertinent to note that the defendant no.1 has filed the written statement and he has admitted that the suit property is the ancestral property of the plaintiffs and the defendants and further, he has admitted that he is not the absolute owner of the suit property and the plaintiffs are the co-owners and coparceners of the suit property and the plaintiffs are having birth right in the suit property and he has further stated that the defendant no.2 knowing the fact that the defendant no.1 is not having absolute right, title by coercion, fraud, misrepresentation by take undue advantage of illiteracy of the defendant no.1 fraudulently created the alleged gift deed dated 30/03/2017. In the case on hand, the defendant no.1 has seriously questioned the gift deed and he has stated that the gift deed is the outcome of the fraud played by the defendant no.2 on the defendant no.1. It is pertinent to note that whether the suit property is the self acquired property of the defendant no.2 or not requires full fledged trial and at this stage it cannot be held that it is the self acquired property of the defendant no.2. Further, it is pertinent to note that the defendant no.2 has to prove the gift deed executed by the defendant no.1 out of love and affection and with the consent of the other co-sharers and coparceners. Further, if this I.A. is not allowed much loss will be caused to the plaintiffs, on the contrary, the defendant no.2 will not be put to any loss or hardship.

10. From the above discussion, it becomes clear that the plaintiff no.2 has established prima-facie case and the plaintiff no.2 is entitled to the equitable relief of temporary injunction and as such, the balance of convenience tilts in his favour in respect of the suit schedule property. Therefore, I have arrived at the conclusion of answering points No.1 to 3 in the affirmative.
11. **Point No.4:** In view of my discussion made supra, I proceed to pass the following:

### **ORDER**

I.A.No.I filed by the plaintiff no.2 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, is hereby allowed.

Consequently, issue temporary injunction restraining the defendant no.2 or his men or his agents or anybody claiming through him from alienating and creating charge over the suit property till the disposal of the suit.

Under the facts and circumstances of the case, no order as to costs.

(Directly I have typed on my laptop, corrected and then pronounced by me in the open Court on this the 3<sup>rd</sup> day of April 2025.)

**(Sri. Hanamantarao R.Kulkarni)**  
**Senior Civil Judge & JMFC,**  
**Hunagund.**