

KABK710000412023



O.S./13/2023

{CASE_CAUSE_TITLE}

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

PRESENT :

SRI ABDUL RAHIMAN. A. MULLA

B.A.L, LL.B. (Hons.)

**Prl. Civil Judge & JMFC,
Jamkhandi.**

Dated this 11th day of August- 2023

O. S. No.13/2023

1. Smt. Kashibai W/o Sahadev Mohite
Age: 60 years, Occ: Household work,
R/o Kalabilagi village, Tq: Jamkhandi,
Dist: Bagalkot.
2. Smt. Sunita @ Sunanda W/o Chandrashekhar
Ambli, Age: 35 years, Occ: Household work,
R/o Kalabilagi village, Tq: Jamkhandi,
Dist: Bagalkot.

..... Plaintiffs.

(By Sri.A.P.K., Advocate)

V/s.

1. Shri. Sahadev S/o Anand Mohite
Age: 68 years, Occ: Agriculture,
R/o Kannolli village, Tq: Jamkhandi,
Dist: Bagalkot.

2. Sundabai D/o Shrikanth Jadhav
Calling herself as Sundabai
W/o Sahadev Mohite, Age: 50 years,
Occ: Household work,
R/o Kannolli village, Tq: Jamkhandi,
Dist: Bagalkot.
3. Shri. Tanaji Calling himself as
S/o Sahadev Mohite Age: 25 years,
Occ: Agriculture, R/o Kannolli village,
Tq: Jamkhandi, Dist: Bagalkot.
4. Shri. Netaji Calling himself as
S/o Sahadev Mohite Age: 23 years,
Occ: Agriculture, R/o Kannolli village,
Tq: Jamkhandi, Dist: Bagalkot.
5. Ujawala Calling herself as
D/o Sahadev Mohite @ Smt, Ujawala W/o
Mahadev Jadhav Age: 22 years,
Occ: Household, R/o Billur, Tq: Jatt,
Dist: Sangali State: Maharashtra.

..... Defendants.

(By D-1, 2, 4 & 5 Sri.G.S.B., Advocate)
(By D-3 Sri. S.B.K., Advocate)

I. A. No.I

1. Smt. Kashibai W/o Sahadev Mohite
and another.

.....Applicants/Orgl. Plaintiffs.

V/s.

1. Tanaji Calling himself as S/o Sahadev Mohite
2. Netaji Calling himself as S/o Sahadev Mohite
Both are R/o Kannolli, Tq: Jamkhandi.

..... Opponent/ Orgl. Defendants. No.3 and 4.

ORDERS ON I.A. No.I FILED BY PLAINTIFFS UNDER
ORDER 39 RULE 1 AND 2
R/W SECTION 151 OF CPC

The present suit is filed by plaintiffs for the relief of declaration and partition and separate possession against defendants and this application is filed by plaintiffs along with the suit praying this court to pass an order of temporary injunction restraining defendant No.3 and 4 from alienating or mortgaging the suit schedule property bearing R.S No.129/*/9 measuring 2 acre 19 guntas situated at Kannolli village, Tq: Jamkhandi to anybody else in any manner till disposal of suit.

2. In the affidavit annexed to the application, plaintiff No.2 averred that they have filed this suit for relief of declaration and partition and separate possession. Plaintiff No.1 is legally wedded wife of defendant No.1 and she is daughter of defendant No.1. The suit schedule property is ancestral joint family property and no partition has been effected by metes and bounds between plaintiffs and defendant No.1. In

the meanwhile defendant No.1 has executed gift deed dated 23-11-2022 in favour defendant No.3 with respect to suit schedule property behind their back and without their knowledge and only intention of defendant No.1 is to deprive their legitimate share over suit schedule property. The gift deed dated 23-11-2022 is null and void and not binding on their share and amongst these grounds, prayed to allow the application.

3. After registration of suit, summons was issued to defendants, wherein defendant No.1, 2, 4 and 5 and defendant No.3 appeared through their separate counsels and filed written statement of defendant No.4 which was adopted by other defendants and memo adopting the written statement as objections to I.A No.1 and by denying the entire averments of the plaint, contended that plaintiffs are not in possession and enjoyment of suit schedule property. The original propositus Anand S/o Maruti Mohite had five sons and five daughters and without

impleading them as parties, present suit of plaintiffs is not maintainable. Further plaintiffs have not included RS No.129/2, RS No.129/5 and RS No.129/9 and one house situated in Kannolli village as suit schedule properties.

4. It is further contended that defendant No.1 has executed registered gift deed in favour of defendant No.3 and 4 with respect to suit schedule property on 23-11-2022, wherein it is clearly mentioned by defendant No.1 that defendant No.3 and 4 are his children. Plaintiffs by quarreling with defendant No.1 started to reside in parental house about 40 years back and hence plaintiffs are not entitled for the reliefs claimed in the application and amongst these grounds, prayed to reject the application.

5. Heard. Perused the records placed before the court.

6. The points that arise for my consideration is as under :

1. Whether prima-facie case and balance of convenience lies in favour of plaintiffs ?

2. To whom irreparable loss and injury would be caused in case of granting temporary injunction or refusing to grant the same?
3. What Order ?
7. My findings to the above points is as under :

Point No.1:- In the Affirmative

Point No.2:- To plaintiffs in case of refusing to grant temporary injunction.

Point No.3:- As per final order for the following :

: R E A S O N S :

8. **POINT No.1 AND 2**:- For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

9. It is the specific case of plaintiffs that plaintiff No.1 is wife and plaintiff No.2 is daughter of defendant No.1 and without their knowledge, defendant No.1 has executed registered gift deed dated 23-11-2022 in favour of defendant No.3 and 4 with respect to suit schedule property, which is ancestral joint family property and said gift deed is not binding on them.

Now taking advantage of the same, defendant No.3 and 4 are attempting to alienate the suit schedule property.

10. In support of his contention, plaintiffs produced in all 6 documents i.e., RTC extract of R.S. No.129/9, certified copy of registered gift deed dated 23-11-2022, certified copy of M.E No.3256, photo copy of Aadhar card and voters I.D. card of plaintiff No.1 and certified copy of school certificate of plaintiff No.2.

11. On the contrary, defendants contended that plaintiffs have left the company of defendant No.1 by quarreling with him about 40 years back and residing in their parental house and defendant No.2 is legally wedded wife of defendant No.1 and defendant No.3 to 5 are legitimate children of defendant No.1. Out of love and affection, defendant No.1 has executed registered gift deed with respect to suit schedule property on 23-11-2022 and now they are in possession and enjoyment of the same.

12. In support of their contention, defendants produced 20 documents i.e., certified copy of RTC

extracts of suit schedule property from the year 1964 to 1999 and 2023, certified copy of M.E. numbers, photocopy of gift deed and photocopy of Aadhar card of defendants and school leaving certificate of defendants.

13. Prima-facie on perusal of pleadings and documents produced by both the parties, it reveals that suit schedule property is now standing in the name of defendant No.1 and admittedly he has executed registered gift deed in favour of defendant No.3 and 4. Whether plaintiff No.1 is the legitimate wife of defendant No.1 or defendant No.2 is the legitimate wife of defendant No.1 is a matter of question of trial and same cannot be adjudicated at this stage of the case by holding mini trial.

14. Whether the suit schedule property is ancestral joint family property or otherwise and whether suit of plaintiff is bad for non-joinder of necessary properties and parties is a matter of trial and it requires evidence. Prima-facie at this stage of

the case the suit schedule property is standing in the name of defendant No.1 and on the basis of registered gift deed said to have been executed by defendant No.1 in favour of defendant No.3 and 4, if defendant No.3 and 4 alienate the suit schedule property, then suit schedule property will not remain for enjoyment of fruits of the decree.

15. In order to grant an order of temporary injunction, 3 essential ingredients have to be fulfilled. The documents produced by plaintiffs prima facie goes to show that suit schedule property is standing in the name of defendant No.1 and if suit schedule property is alienated by defendant No.3 and 4 during the pendency of the suit, the very purpose of filing this suit will be frustrated.

16. Prima-facie at this stage of the case, in order to grant an order of temporary injunction, 3 essential ingredients have to be fulfilled i.e., prima-facie case, balance of convenience and irreparable loss and injury. Prima-facie the documents produced by plaintiffs

reveals that suit schedule property is standing in the name of defendant No.1. If temporary injunction as prayed by plaintiffs is not granted, it would cause irreparable loss and injury to plaintiffs, rather than defendant No.3 and 4. Hence for the above said reasons, I answer point No.1 in the 'affirmative' and point No.2 as 'irreparable loss and injury would be caused to plaintiffs in case of refusing to grant temporary injunction'.

17. **POINT No.3:** For the reasonings and findings given to point No.1 and 2, I proceed to pass the following :

ORDER

I. A. No.I filed by plaintiffs under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C is hereby allowed.

Defendant No.3 and 4 are hereby restrained by an order of temporary injunction from alienating or mortgaging suit schedule property bearing R.S

No.129/*/9 measuring 2 acre 19 guntas statued at Kannolli village to anybody else in any manner till disposal of suit.

The interim exparte temporary injunction order dated 12-01-2023 is hereby confirmed.

(Typed to my dictation by the Stenographer directly on computer, then corrected, printout taken, signed by me and then pronounced in the open court on this **11th August -2023**)

(Abdul Rahiman A. Mulla)
Prl. Civil Judge & JMFC,
Jamkhandi.