

IN THE COURT OF PRL. CIVIL JUDGE AND JMFC, ANEKAL.

16th Day of November 2023

**PRESENT : Smt. Kavya B.H., L.L.M.,
Prl. Civil Judge and JMFC,
Anekal.**

OS.No. 536/2009

Plaintiff : **Sri. Muniyappa,**
S/o late Kumaiah,
Aged about 48 years,
R/at: Adur village,
Kasaba Hobli,
Anekal Taluk,
Bengaluru district.

**(Represented By Sri.M.S. Advocate)
V/s.**

Defendants : **1. Smt. Kaveramma,**
D/o late Kumaiah,
W/o Muniyappa,
Aged about 55 years,

2. Smt. Yellamma,
W/o Yellappa,
D/o late Kumaiah,
Aged about 52 years,

3. Sri. Marappa,
S/o late Dolappa,
Aged about 70 years,
Since dead by Lrs,

3(a).Smt. Yellamma,
W/o late Marappa,
Aged about 65 years,

3(b).Smt. Munirathnamma,
D/o late Marappa,
Aged about 45 years,

3(c).Sri. Muniraju,
S/o late Marappa,
Aged about 38 years,
3(a to c) are R/at: Adur village,
Kasaba hobli,
Anekal Taluk,
Bengaluru District.

4. Smt. Kaveramma,
D/o late Dolappa,
W/o Venkatesh,
Since dead by Lrs,

4(a).Sri. Gundappa,
Aged about 55 years,

4(b).Sri. Raju,
Aged about 48 years,

4(a & b) are R/at: No. 64,
Jambusavaridinne,
J.P. Nagar, 8th phase,
Bengaluru District.

5. Sri. Thimmaiah,,
S/o Munithimmaiah,
Aged about 59 years,
R/at: Avadadenahalli village,
Kasaba hobli,
Anekal Taluk,
Bengaluru District.

(D1 to 4 Rep. by Sri.M.A.S. D5 Rep. By Sri.H.S Advocates)

ORDERS ON IA No.1

The Plaintiff has filed this application under Order-39 Rules-1 and 2 of the CPC for granting an interim order of Temporary

injunction, restraining the defendant No.6, his agents or anybody from changing the nature of the suit property or from putting up any construction over the suit schedule property, pending disposal of the suit.

2. Brief facts of the Plaintiff's application as per the averments stated in the supporting affidavit, are as below:-

That the plaintiff has filed this suit seeking for partition and other consequential reliefs in respect of the suit schedule property. That the suit schedule property is in joint possession and enjoyment of the plaintiff and defendants and he has got definite share in it. Though the defendants 3 and 4 have no exclusive right over the suit schedule property they had sold the suit property in favour of the defendant No.5 under a registered sale deed and now during the pendency of the suit defendant No.5 gifted the same in favour of his brother defendant No.6 under a registered Gift Deed dated 9.4.2015. The purchaser/defendant No.6 is now making attempt to put up construction and to change the nature of the suit schedule property. He has got prima facie case and balance of convenience

is very much in his favour. On these grounds, plaintiff has sought for an order of Temporary injunction against the defendant No.6.

3. The Defendant No.6 has filed his objections to the above application contending that, the application is not maintainable either in law or on facts of the case. He has denied entire affidavit averments, except the execution of the Gift deed in his favour on 9.4.2015. He has filed written statement which may be read as part and parcel of this objection statement. There exist no joint family as alleged by the plaintiff. At this stage of cross examination of PW.1 the plaintiff with an intention to harass this defendant No.6 has filed the present application. Hence prayed for dismissing the said application.

4. Heard arguments.

5. The points that arise for my consideration are:-

1) Whether Plaintiff has made out a prima-facie case in his favour?

2) Whether balance of convenience is in favour of the Plaintiff?

3) Whether Plaintiff would suffer irreparable injury, if the temporary injunction is not granted?

4) What order?

6. 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 : As per final order for the following:-

R E A S O N S

7. Point Nos.1 to 3:- The Plaintiff has filed this suit against the defendants for the relief of partition and his 1/3rd share in the suit schedule property land bearing Survey Number-33/24 measuring 1 acres situated at Adur village, Kasaba Hobli, Anekal Taluk, so also for declaration that the sale deed dated 10.11.1982 executed by defendant Nos.3 and 4 in favour of defendant No.5 and so also Gift deed dtd. 9.4.2015 executed by defendant No.5 in favour of defendant No.6 are not binding on him and for consequential Permanent injunction based on the pleading that the suit schedule property is the joint family property and he has got his share in the same.

8. On the other hand the defendants deny the joint family so also the suit schedule property is a joint family property and

they deny claim of the plaintiff for partition and other reliefs. In the written statement filed by the defendant No.6 he has specifically contended that the defendant No.5 has gifted the suit property to him under a Registered Gift Deed dated 9.4.2015.

9. The plaintiff has produced the documents like RTC, sale deed, gift deed in respect of the suit schedule property.

10. On the other hand, the defendants 5 and 6 have also produced documents like sale deed, gift deed along with RTC and photographs.

11. On perusal of the entire materials on record, though in the written statement filed by the defendant No.6 on 25.05.2022 he has specifically contended that the defendant No.5 has executed a registered Gift deed dtd. 9.4.2015 in respect of the suit schedule property, the plaintiff has not come forward to resist the same, even though the said fact of execution of the Gift Deed in favour of defendant No.6 is very much within the knowledge of the plaintiff on 13.11.2020 itself when he had filed an application for impleading the defendant No.6 in this suit. Admittedly, the evidence on the side of the plaintiff is under

progress and at this stage the present application is filed seeking an order of temporary injunction.

12. In the photographs produced by the defendants it seems that in the land in question there exist agriculture and in another photographs the land has been prepared for sowing. That means there exist no other nature of activities carried on as apprehended by the plaintiff that the defendant No.6 is trying to put up the construction in the suit schedule property by changing its nature.

13. Apart from that the suit is of the year 2009 and now the evidence has been started and if at this stage, if any order of injunction is granted it leads to multiplicity of proceedings. From these it is clear that the suit is for the relief of partition and other consequential reliefs. The validity or otherwise of the Gift Deed alleged to have been executed by the defendant No.5 in favour of defendant No.6 on 09.04.2015 is during the pendency of the suit and the principles of Lis-pendence operates. Hence, these are to be determined after the full fledged trial in the suit.

14. In view of the above findings, I am of opinion plaintiff is not entitled to the relief of Temporary injunction as sought for, as the plaintiff has not made out prima facie case and the balance of convenience is also not lies in his favour. On the other hand, the materials produced by the defendants goes to show that there is no such activities carried on in the suit schedule property and at this stage if an order of temporary injunction is not granted the plaintiff will not be put to any hardship or injustice. Consequently, Point Nos.1 to 3 are answered in the negative.

15. Point No.4:- For the foregoing reasons, I proceed to pass the following:-

O R D E R

I.A. dated 23.06.2023 filed by the plaintiff,
under Order-XXXIX Rules-1 & 2 r/w. Sec.151 of the
CPC. is hereby dismissed.

No order as to costs.

(Dictated to stenographer directly on computer, computerized printout taken by her, and then corrected and pronounced by me in open court on this 16th day of November 2023)

Sd/-

**(Smt.Kavya B.H)
Prl.Civil Judge and JMFC.,
Anekal.**

