

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,

DODDABALLAPUR.

**PRESENT: Sri. Arvind Saibanna Hagargi,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC., Doddaballapur.**

Dated this 21st day of April 2022

O.S.No.77/2022

Plaintiff:

1. Smt.M.Puttathayamma,
W/o. Sri.M.Raghuramayya,
A/a. 67 years,
R/at. Kuruburapalaya,
Kurudi, Hosur,
Chikkaballapur – 561210.

Represented by her GPA Holder
Sri.Reddappa.N.,
S/o. Nareppa Reddy, A/a. 48 years,
R/at. Lakkepalli Village,
M.Gollahalli Post,
Chintamani Taluk,
Chikkaballapura – 563123.

(Represented by Advocate Sri.H.Manjunath)

V/s.

Defendants:

1. Smt.M.Puttathayamma,
W/o. Sri.G.Raghuramaiah, A/a. 66 years,
R/at. No.57, Sri.Rama Nilaya,
5th cross, 2nd Stage,
Vivekananda Road,
Near Shivarudrappa Park,
Gokula IInd stage, Near TUDA Park,
Settihalli, Kyathsandra Post,
Tumkur – 572102.

2. Smt.R.Vinutha,
D/o. Sri.G.Raghuramaiah, A/a. 44 years,
R/at. No.11/1, K.K.Lane, 2nd Cross,
Cottonpet, Bengaluru – 560053.
3. Smt.R.Vanitha,
D/o. Sri.G.Raghuramaiah, A/a. 38 years,
R/at. No.1301/8, 'Mahashree'
13th Main Road, Ist Cross,
Venkatadri Layout,
Near Siddarameshwara Temple, Belagumba,
Tumkur – 572104.
4. Sri.R.Kumara Ramu,
S/o. Sri.G.Raghuramaiah, A/a. 36 years,
R/at. No.57, Sri. Rama Nilaya,
5th Cross, 2nd Stage, Vivekananda Road,
Near Shivarudrappa Park, Gokula IInd Stage,
Near TUDA Park,
Settiahalli, Kyathsandra Post,
Tumkur – 572102.

(Represented by Adv Smt.H.V.Vasanthalakshmi.)

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ORDER ON I.A.No.I to III

These orders arises out of I.A.No.I and II filed by the plaintiff against defendant No.1 to 4 with a prayer to restrain defendant No.1 to 4 from alienating, encumbering and also in effecting changes in the revenue records over suit properties till disposal of suit and I.A.No.III filed by the defendant No.1 to 4 under order 39 Rule 4 of CPC with a prayer to vacate the exparte temporary injunction orders dated 03-02-2022.

2. **FACTS IN BRIEF:****Description of suit schedule A to C properties:**

A to C	Sy.No.	Acres-guntas	Situated at
A 1	15	5-07	Yeramuddenahalli Village, Sasalu Hobli, Doddaballapur Tq.
2	10	18-09 guntas (Which is inclusive of 0-25 guntas karab)	“
3	12	11-38 guntas	“
4	14	4-14 guntas (Which is inclusive of 18 guntas Kharab land)	“
5	13	2-24 guntas	“
B	10 (In Item No.2 of Schedule 'A' property)	7-14 guntas (Which is inclusive of 14 kharab land)	“
C	10 (In Item No.2 of Schedule 'A' property)	7-31 guntas (which is inclusive of 11 kharab land)	“
D 1	12 (Item No.1,3,4 and 5 of suit schedule 'A' property)	11-38	“
2	14 (Item No.1,3,4 and 5 of suit schedule 'A' property)	4-14 guntas (which is inclusive of 18 guntas)	“
3	13 (Item No.1,3,4 and 5 of suit schedule 'A' property)	2-24 guntas	“

This is a suit of the plaintiff for the relief of declaration to declare gift deed dated 27-12-2021 executed by defendant No.1 to 4 in respect of schedule 'A' to 'D' properties and consequential relief of permanent injunction restraining the defendants from interfering the plaintiff's possession over suit schedule property.

3. The case of plaintiff is that one D.Venkatarayappa was said to be the owner of schedule 'A' properties and one K.N.Devendra Swamy was said to be the adopted son of D.Venkatarayappa. This adopted son is alleged to have sold schedule 'A' properties to one Sri.A.S.Mustaq Ali under registered sale deed dated 05-09-1969. In turn A.S.Mustaq Ali has sold schedule 'A' property to one Smt.Kroshid Dorab Nariman under sale deed dated 05-11-1969. The said Smt.Kroshid Dorab Nariman had only son Sri.Burjor Nariman and they have orally partitioned the suit schedule properties under family settlement deed dated 05-06-1986 as per the family settlement deed present 'A' schedule property had fallen to the share of Sri.Burjor Dorab Nariman and his name was recorded in the RTC of schedule 'A' properties. This Sri.Burjor Dorab Nariman has sold suit schedule 'A' property in favour of present plaintiff under registered sale deed dated 30-09-1989. The husband of plaintiff had expired on 01-03-1995 there are no issues to the plaintiff.

4. It is specific allegation of plaintiff that on 27-12-2021 she was shocked to see that some people are roaming in and around the suit schedule property and she has contacted her power of attorney Sri.Reddappa. The power of attorney on enquiry with office of Sub-Registrar had found that defendant No.1 in collusion with revenue official has fraudulently obtained 11 E sketch and executed Gift deed on 27-12-2021 in favour of defendant No.2 by impersonation.

Defendant No.2 is the daughter of defendant No.1. It is also the allegation of plaintiff that the defendant No.1 to 4 are also alleged to have executed Gift deed dated 27-12-2021 in respect of suit Item No.2 of schedule 'A' property in favour of defendant No.3 who is the second daughter of defendant No.1 without having transferable rights. Similarly, defendant No.1 is alleged to have impersonated the plaintiff and got executed another Gift deed on 27-12-2021 in favour of defendant No.4 who is none other than the son of defendant No.1 in respect of portion of suit Item No.1, 3, 4 and 5 of schedule 'A' property. The plaintiff is said to have not alienated any portion of suit lands. The defendants are said to have brought into existence the Gift deed dated 27-12-2021 fraudulently to defeat the rights of plaintiff and there by denying the title of plaintiff's over suit schedule properties. Hence, the plaintiff has filed the present suit and present I.A.No.I and II.

5. The defendants No.1 to 4 have filed their written statement rather defendant No.1 has filed written statement. In the written statement the defendant No.1 has denied all the allegations and assertions of plaint. The defendant No.1 has come up with a defence that the suit schedule properties are belonging to one Devendraswamy. It is admitted fact that Devendraswamy has sold property to A.S.Mustaq Ali and Mustak Ali has sold all the properties except Sy.No.16 measuring 19-0 acres 0-11 guntas in favour of one Smt.Kroshid Dorab Nariman on 05-11-1969. The defendants have also admitted the family settlement in between Smt.Kroshid Dorab Nariman and her son Sri.Burjor Dorab Nariman dated 27-01-1974. It is specific case of defendant No.1 to 4 that the said Burjor Dorab Nariman has executed registered sale deed dated 30-09-1989 in

favour of defendant No.1 in respect of suit schedule properties and on the basis of the sale deed MR No.2/1990-91 is sanctioned in favour of defendant No.1. The defendant No.1 had become in possession of suit schedule properties on the basis of sale deed dated 07-12-1989. Defendant No.1 had filed suit for declaration and injunction against one Smt.Annithomas in O.S.No.707/1998 and same is decreed in favour of Ist defendant. The Ist defendant got married to Sri.G.Raghuramaiah and out of her wedlock with G.Raghuramaiah she has got two daughters who are defendant No.2 and 3 and a son who is defendant No.4. The defendant No.1 after getting prepared 11 E sketch has executed Gift deeds in favour of defendant No.3 and 4 on dated 27-12—2021 in suit schedule 'A' properties. The husband of defendant No.1 is said to have acquired title to the house property at No.5, IIIrd Block, KHB Quarters, Lalbhag, Bengaluru under release deed. On these contentions the defendant No.1 prayed to dismiss the suit of plaintiff.

6. The defendants have filed objections to I.A.No.I and II the same line of written statement.

7. The defendants have filed I.A.No.III for vacating exparte interim injunction order dated 03-02-2022. An affidavit is filed by the defendant No.1. The entire assertions made in the written statement are reiterated in the affidavit accompanying I.A.No.III.

8. The plaintiff has filed objections to I.A.No.III. The statement of objections is of denial and thereafter the entire plaint assertions have been restated in the affidavit. The plaintiff has further contended that on these grounds the plaintiff prayed to reject I.A.No.III and to allow I.A.No.I and II.

9. Heard arguments of both sides.
10. Defendants filed written arguments on I.A.No.III.
11. The points that arises for my consideration are:
 1. Whether plaintiff has made out prima-facie case for grant of interim injunction order as claimed in I.A.No.I & II
 2. In whose favour the factor of balance of convenience lies?
 3. Who will be put the irreparable loss, if an interim injunction orders as claimed in I.A.No.I and II are refused?
 4. Whether defendant No.1 to 4 made out grounds for vacating the exparte temporary injunction orders granted in their favour vide orders dated 03-02-2022?
 5. What order?
12. My findings on the above said points are as under:

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| Point No.1: | In the negative |
| Point No.2: | Does not survive for my consideration |
| Point No.3: | Does not survive for my consideration |
| Point No.4: | In affirmative |
| Point No.5: | As per final order as per the following; |

REASONS

Point No.1 and 4:

13. These two points are interlinked to each other. The plaintiff has filed I.A.No.I and II under order 39 Rule 1 and 2 of CPC against the defendant No.1 to 4 restraining them from alienation of suit property and also from changing and effecting entries in the ROR in pendency of suit. Percontra the defendant No.1 to 4 have filed I.A.No.III under order 39 Rule 4 of CPC with a prayer to vacate the exparte interim injunction order granted in favour of plaintiff dated 03-02-2022. The relief of interim injunction is governed by order 39 Rule 1 and 2 of C.P.C. and Section 37 of Specific Relief Act. The plaintiff has filed the present application under order 39 Rule 1 and 2. Therefore, plaintiff has to make out a prima-facie case for grant of interim injunction order. Prima-facie case includes maintainability of the suit, whether there is a triable issue which is made out by the plaintiff at the stage of this case. Whether this Court has got jurisdiction to try this suit is also falls under the prima-facie case. Making out of prima-facie case is really an harbinger for consideration of application under order 39 Rule 1 and 2 of C.P.C. This principle of law is laid down by **Hon'ble Supreme Court of India Gowrishankara Swamigalu V/s. Siddaganga Mutt reported in ILR 1989 KAR Page No.1701 where in it is held that-**

“Order 39 Rules 1 & 2 – Grant of ad-interim injunction – Principles applicable - Existence of prima-facie case is harbinger to investigate other aspects – If no prima facie case, balance of convenience, irreparable loss etc., need no consideration – Existence of prima-

facie case does not permit leap-frogging by plaintiff to injunction directly without evaluation of other considerations unmindful of other consequences – Even if unbeatable prima-facie case exists injunction not to be granted, if consequences of grant, detrimental in nature”.

and also by Hon’ble Supreme Court of India in the case of Kashi Math Samsthan and others V/s. Srimad Sudhindra Thirtha Swamy and another reported in AIR 2010 SCC Page No.296 wherein it is held that

“Grant of interim relief – requirements – Balance of convenience and irreparable loss – When not required to be considered – Held, in order to obtain order of injunction, party has to show (i) prima-facie case to go for trial, (ii) balance of convenience in his favour, and (iii) irreparable loss and injury if injunction is not granted – Question of considering balance of convenience or irreparable loss and injury to the party does not arise if party fails to prove prima-facie case to go for trial”.

14. In the present facts of the case the fact that originally suit property was belonging to suit schedule ‘A’ property was belonging to one D.Venkatarayappa and the fact that one K.N.Devendraswamy is the adopted son of D.Venktarayappa is not at dispute. It is also not

at dispute that the said K.N.Devendraswamy has sold the suit property in favour of one A.S.Mustaq Ali under registered sale deed dated 05-09-1969. It is admitted fact both by plaintiff and defendant No.1 to 4 that this A.S.Mustaq Ali has sold suit schedule 'A' properties to one Smt.Kroshid Dorab Nariman under sale deed dated 05-11-1969. It is also admitted fact that there was family settlement and partition in between this lady Smt.Kroshid Dorab Nariman and her son Sri.Burjor Dorab Nariman by way of oral partition and family settlement deed dated 05-06-1986. It is also undisputed fact that as per the family settlement 'A' schedule property has fallen to the share of Sri. Sri.Burjor Dorab Nariman. The only serious disputed fact that executed of sale deed from Sri.Burjor Dorab Nariman in favour of plaintiff and defendant No.1 in respect of suit schedule property on 30-09-1989. It is pertinent to note here that the dates of sale deeds on which the plaintiff and defendant No.1 are laying their hands on the suit schedule 'A' property is same date i.e., 30-09-1989. The document number of defendant is 1467/1989-90 and the document number of the plaintiff is 1735/1968-69. The document number of the sale deed of plaintiff is not pleaded in Paragraph No.6 of the plaint. Whereas the defendant has pleaded this fact in Paragraph No.18 of her written statement. Now the sale deed at document No.1467/1989-90 is produced by the plaintiff at Sl.No.6 of the list of documents filed along with the plaint it is in English language. As per the recitals defendant No.1 namely Smt.Puttatayamma W/o. G.Raghuramaiah is the purchaser/vendee of the suit schedule properties. The name of plaintiff is also M.Puttatayamma W/o. M.Raghuramaiah. The only difference in the name of plaintiff and defendant No.1 is the initial of name of husband. The full name of plaintiff is "M.Puttatayamma W/o. Sri.M.Raghuramayya" and full

name of defendant "M.Puttatayamma W/o. G.Raghuramaiah". Now the sale deed at Sl.No.6 produced by the going by the name of the purchaser it stands in the name of defendant No.1. Now the plaintiff also claiming her right in the sale deed dated 30-09-1989 as pleaded in Paragraph No.6 of the plaint. As per the list of documents of plaintiff except this sale deed of defendant No.1 at document No.1467/1989-90 no other sale deed standing in the name of plaintiff is produced by the plaintiff. The very document on which the plaintiff is claiming her right of title and denial the title of defendant is not found in the part of documents relied upon by the plaintiff. The defendants No.2 to 4 have also produced the documents i.e., sale deed dated 30-09-1989 at document No.1467/1989-90 and it is a original sale deed. The signatures of vendor Sri.Burjor Dorab Nariman is in running handwriting the sale deed of defendant No.1 which is at document No.7 of the list of documents of defendant, but in the sale deed i.e., produced by the plaintiff at Sl.No.6 the signature of seller Sri.Burjor Dorab Nariman is not in running handwritings. The sale deed is not typed copy. It is a hand written copy. The signature of consenting witness Smt.Kroushid Dorab Nariman is also not in running hand writing in the sale deed produced by the plaintiff. But the recitals of the documents is very clear that both the sale deeds at Sl.No.6 of the documents produced by the plaintiff and at document No.7 by the defendant are both standing in the name of defendant No.1 M.Puttathayamma W/o. G.Raghuramaiah and not plaintiff namely M.Puttathayamma W/o. M.Raghuramayya. The defendant has filed suit in O.S.No.707/1998 on the file of the Prl. Senior Civil Judge, Bengaluru Rural District and same came to be decreed in favour of present defendant vide judgment dated 22-01-2007 and defendant is declared as owner of present 'A' schedule

properties. Therefore, title of defendant is confirmed under the sale deed at document No.7 of the list produced by the defendant and also by the decree of competent civil Court. The sale deed at document No.7 is original sale deed. There is no document i.e., sale deed standing in the name of plaintiff M.Puttathayamma W/o. M.Raghuramayya. Now the plaintiff is bound to produce the sale deed dated 30-09-1989 standing in her name to assert title over the suit property which suit schedule 'A' property and to defeat the decree of the Court in O.S.No.707/1998. But the plaintiff has not produced any title deed standing in her name in respect of suit schedule 'A' properties. Even in the prayer column the plaintiff has not sought to declare her title to the suit property and also to declare the Gift deeds executed by defendant No.1 in favour of defendant No.2 to 4 in respect of 'A' to 'D' properties. Without claiming the declaration of title shall not have right to seek the relief of declaration to declare the Gift deed dated 27-12-2021 executed by defendant No.1 in favour of defendant No.2 to 4 in respect of suit schedule 'A' to 'D' properties. Going by the all the documents produced by the plaintiff and in the light of the admitted fact of title of original owner D.Venkatarayappa and sale of the same to A.S.Mustaq Ali by K.N.Devendaraswamy and thereafter sale of the family by A.S.Mustaq to Kroushid Dorab Nariman and family settlement in between Smt.Kroushid Dorab nariman and her son Sri.Burjor Dorab Nariman and disputed fact of alienation of suit land by Sri.Burjor Dorab Nariman in favour of plaintiff and defendant. The defendant has probabalized their case by production of the original sale deed dated 30-09-1989 executed in their favour by Sri.Burjor Dorab Nariman and which is also accepted by the civil Court in O.S.No.707/1998, but on the other hand the plaintiff has no

prima-facie material to prima-facie show that she has title over suit schedule 'A' properties. Therefore, from the plaint assertions, affidavits filed along with I.A.No.I and II and the documents produced by the plaintiff I am of the opinion that the plaintiff has failed to make out prima-facie case for grant of interim injunction order as claimed in I.A.No.I and II. On the contrary the defendant No.1 to 4 by virtue of the original sale deed dated 30-09-1989 at document No.7 of the list of the documents of defendants and decree of the competent civil Court in O.S.No.707/1998 have establish that the defendant No.1 is the owner of suit schedule 'A' properties. Hence, I answered point No.1 in negative and point No.4 in affirmative.

Point No.2 and 3:-

15. When the plaintiff has failed to make out prima-facie case then it is not required for the Court of equities to make rowing enquiry and investigation regarding the factors of balance of convenience and irreparable loss. This principle of law is laid down by Hon'ble High Court of Karnataka in the celebrated case of **Gowrishankara Swamigalu V/s. Siddaganga Mutt** reported in ILR 1989 KAR Page No.1701 and also by Hon'ble Supreme Court of India in the case of **Kashi Math Samsthan and others V/s. Srimad Sudhindra Thirtha Swamy and another** reported in AIR 2010 SCC Page No.296 supra. Hence, I answered point No.2 and 3 does not survive for my consideration.

Point No.5:

16. In view of my findings on point No.1 to 4, I proceed to following;

ORDER

I.A.No.I and II is filed by the plaintiff under order 39 Rule 1 and 2 R/w Section 151 of C.P.C. are hereby rejected.

I.A.No.III filed by the defendant No.1 to 4 under order 39 Rule 4 of CPC is hereby allowed. Exparte interim injunction order dated 03-02-2022 stands vacated.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 21st day of April, 2022.)

(ARVIND SAIBANNA HAGARGI)
Senior Civil Judge & JMFC.,
Doddaballapur.