

**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 19th day of October, 2022

O.S.No.267/2019

Plaintiff:

Sri.V.Anjanegowda,
S/o. Sri.V.Venkatashamanna,
A/a. 42 years,
R/at. Chikkannahalli Village,
Doddabelavangala Hobli,
Doddaballapura Taluk,
Bengaluru Rural District – 561203.

(Represented by Advocate Sri.Asadulla Khan)

V/s.

Defendants:

1. Sri.G.T.Ravikumar,
S/o. Late Sri.V.Thimmaiah, A/a. 37 years,
R/at. No.3919, Gangadharapura,
Doddaballapura Town and Taluk,
Bengaluru Rural District – 561203.
2. Sri.Rangaswamy,
S/o. Late Sri.Rangappa, A/a. 45 years,
R/at. Bayalahalli Village,
Bengaluru North Taluk.

(Represented by Advocate
Sri.M.Krishna Murthy)

* * * * *

ORDER ON I.A.No.I & II

This is an application I.A.No.I filed by the plaintiffs under
order 39 Rule 1 and 2 R/w Section 151 of C.P.C. with a prayer

to restrain defendants from alienating, encumbering or from creating any charge over the suit schedule property and I.A.No.II filed by the plaintiff 39 Rule 1 and 2 R/w Section 151 of CPC with a prayer to restrain defendants from interfering with the peaceful possession and enjoyment over the schedule property pending disposal of this suit.

2. **FACTS IN BRIEF:**

Description of suit schedule property:-

All the part and parcel of vacant site property bearing old Khata No.4813/4813/4908/26 new katha at Sl.No.1478 and Khata No.1302/1/4813/1 Vs.26, bearing property site No.26, measuring east to west 40 and north to south 30 (40x30) situated at Rojipura, present 2nd ward, 4th stage, 4th Cross, Doddaballapura Taluk, Bengaluru Rural District and bounded on;

EAST by : Road,

WEST by : Carmal Jyothi School property,

NORTH by : Property belongs to Tarahunase
Siddappa,

SOUTH by : Property belongs to Lakshmamma.

This is a suit of plaintiff for the relief of declaration of title over suit property by virtue of sale deed dated 21-11-2014 and also to declare the partition deed dated 30-04-2009 and sale deed dated 16-03-2015 executed by defendant No.1 in favour of defendant No.2 at document No.DBPD-1/12548/2014-15 are null and void and not binding on the plaintiff and suit schedule property and consequential relief of

permanent injunction restraining the defendants from interfering with plaintiff's possession over suit property till disposal of suit property.

3. The case of plaintiff is that originally suit property was belonging to one Sri.V.Thimmaiah. Sri.V.Thimmaiah is said to have transferred the suit property in favour of one Siddappa under registered sale deed dated 16-03-1989. The Siddappa intun has transferred the suit property in favour of one Smt.Gowramma W/o. Sri.Krishnappa under registered sale deed dated 21-02-1994. It is specific case of plaintiff that Smt.Gowramma and her LRs have transferred the suit property in favour of the plaintiff vide registered sale deed dated 21-11-2014 registered at document No.DBP-1-07781/2014-15. It is specific case of plaintiff that the land Sy.No.11/1 of Rojipura Village, Kasaba Hobli, was said to be granted by the Government to the original owner Sri.V.Thimmaiah vide orders dated 21-06-1984. After the purchase of the suit property the katha of the suit property was said to be effected in the name of Siddappa for the first time and thereafter in the name of vendor of plaintiff Gowramma in the municipal records. After purchase of suit property by plaintiff the name of plaintiff is said to be authorizedly recorded in katha of Municipal records by virtue of the sale deed dated 21-11-2014. Therefore, the plaintiff is said to have become absolute owner of suit property.

4. It is the case of plaintiff that defendant No.1 is the son of the original owner Sri.V.Thimmaiah and defendant No.2 is the son-in-law of the said Sri.V.Thimmaiah. Both defendants No.1and 2 are said to be not having any right and title over suit

property. But the defendant No.1 and 2 in collusion with each other have got executed the sale deed dated 16-03-2015 and got effected the katha in the name of defendant No.2 in Municipal records by misguiding the Municipal Authorities. The plaintiff is said to have resisted this act of defendant No.1 and 2 in getting effected katha in the name of defendant No.2 in Municipal records and Municipality is said to have recommended for cancellation of the katha effected in favour of defendant No.2.

5. It is specific allegation of plaintiff that the defendants are alleged to have come to suit property on 10-06-2019 with laborers and tried to dig the pits and laying the foundation in the suit property. The plaintiff is said to have learnt about the same and rush through the spot and prevented the defendants from entering the suit property. The defendant No.2 is said to have denied the title of plaintiff and asserted his title over suit property. Hence, the present suit by the plaintiff.

6. Defendant No.1 has initially conducted the case in-person and subsequently engaged the services of Sri.M.Krishna Murthy, Advocate and defendant No2 has appeared through Sri.M.Krishna Murthy, Advocate by filing NOC vakalath.

7. Defendant No.1 has filed his independent written statement. The defendant No.1 in his written statement has denied the entire plaint averments and allegations in toto para wise. The defendant No.1 has contended that the property bearing No.4654/4654/2524/VS20 E-W 40 feet N-S 30 feet (30x40) Sq feet property is said to be fallen to the share of

defendant No.1 under partition deed dated 30-04-2009. It is the case of plaintiff that after allotment of the said property the defendant No.1 who has transferred the said property in favour of defendant No.2 under registered sale deed.

8. It is case of defendant No.1 that the land Sy.No.11/1A measuring 0-15 guntas and Sy.No.11/1C measuring 0-17 guntas totally measuring 0-32 guntas was allotted to his father Sri.V.Thimmaiah as per orders in LRF SR 68 dated 21-06-1984. It is further the case of defendant No.1 that the father has converted the said property non agricultural lives and formed layout consisting of 27 sites. The father of defendant No.1 is said to have deposited an amount of Rs.37,819/- towards development charges on 23-12-1993 vide receipt No.65009. The father of defendant No.1 is said to have expired on 02-03-2009. The defendant No.1 is said to have obtained the construction permission for putting of construction in suit property, but he could not made the construction and meanwhile sold the property to defendant No.2. The defendant No.1 has made allegation against the plaintiff that the plaintiff is a politically influenced person and reputed lawyer practicing at Doddaballapur and Director of TAPMCS (Government of Karnataka). The plaintiff is said to be the president of legal cell of the political party and 14 members of CMC, Doddaballapur are said to be belonging to the party to which plaintiff belongs to. Hence, the defendant No.1 has made allegation that the plaintiff who had influenced the Municipal Authority and got effected katha in respect of suit property in his favour to grab the suit property. On these contentions the defendant No.1 dismiss the suit of plaintiff.

9. Defendant No.2 has also filed his independent written statement. The defendant No.2 has also denied the all the assertions and averments of plaint in toto para wise. The defendant No.2 has set up the case that he is the absolute owner of property bearing No.4654/4654/2524/VS20 E-W 40 feet N-S 30 feet (30x40) Sq. feets property. The defendant No.2 has asserted that he has purchased the said property under the sale deed dated 15-03-2015 and defendant No.1 is said to have acquired transferable title under suit property by virtue of partition deed dated 30-04-2009. After the partition the defendant No.1 is said to have obtained construction permission to put up construction, but he could not do the same. Meanwhile he has transferred the suit property to defendant No.2. The name of defendant No.2 is said to be recorded in the Municipal records and defendant No.2 is said to have obtained tap connections to the suit property at Tap No.10667. The defendant No.1 has made allegation against the plaintiff that the plaintiff is a politically influenced person and reputed lawyer practicing at Doddaballapur and Director of TAPMCS (Government of Karnataka). The plaintiff is said to be the president of legal cell of the political party and 14 members of CMC, Doddaballapur are said to be belonging to the party to which plaintiff belongs to. Hence, the defendant No.2 has made allegation that the plaintiff who had influenced the Municipal Authority and got effected katha in respect of suit property in his favour to grab the suit property. On these contentions the defendant No.2 dismiss the suit of plaintiff.

10. The plaintiff has filed I.A.No.I and II under order 39 Rule 1 and 2 R/w Section 151 of CPC with a prayer for interim prohibitory injunction restraining the defendants from alienating the suit property and also restraining the defendants from causing interference with the possession and enjoyment of plaintiff's over suit property till disposal of suit.

11. The plaintiff has filed affidavit along with I.A.No.I and II. The entire plaint assertions and allegations are reiterated in affidavit accompanying I.A.No.I and II and prayed to for interim injunction order.

12. The defendant No.1 and 2 have filed memo stating the contents of their written statement be treated as their objections to I.A.No.I and II.

13. Heard the marathon arguments of both plaintiff and defendant No.1 and 2 on I.A.No.I & II.

14. The points that arise 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 to irreparable loss, if an interim injunction orders as claimed in I.A.No.I & II is refused?
4. What order?

15. My findings on the above said points are as under:

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: As per final order as per the following;

REASONS

Point No.1:

16. These applications filed by the plaintiff against the defendants under order 39 Rule 1 and 2 R/w Section 151 of C.P.C. for interim relief of injunction order. 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 High Court of Karnataka** in the case of **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”.

17. In the present facts of the case in hand the plaintiff is claiming his title over the suit property under the sale deed dated 02-11-2014 and also seeking the relief of declaration the partition effected in between defendant No.1 and his family members and the sale deed executed by defendant No.1 in favour of defendant No.2 vide sale deed dated 16-03-2015. Admittedly, defendant No.2 has not made counter claim of declaration of his title over the suit property on the basis of registered sale deed dated 16-03-2015 and consequential relief of permanent injunction restraining the plaintiff from interfering with the possession of defendant No.2 over the suit property and also to restrain the plaintiff from alienating the suit property. The location and identification of suit property is questioned and attacked by the defendant No.1 and 2 during the course of arguments on I.A.No.I and II. The plaintiff has shown the boundaries in the schedule of the plaint. The defendant No.2 is laying his hand on the disputed property by virtue of sale deed dated 16-03-2015. Now the boundaries of plaint schedule property and the schedule of property shown in sale deed of defendant No.2 becomes relevant. Both the boundaries in plaint schedule property and sale deed of defendant is very produced as under;

Plaint schedule property:

All the part and parcel of vacant site property bearing old Khata No.4813/4813/4908/26 new katha at Sl.No.1478 and Khata No.1302/1/4813/1 Vs.26, bearing property site No.26, measuring east to west 40 and north to south 30 (40x30) situated at Rojipura, present 2nd

ward, 4th stage, 4th Cross, Doddaballapura Taluk, Bengaluru Rural District and bounded on;

EAST by : Road,

WEST by : Carmal Jyothi School property,

NORTH by : Property belongs to Tarahunase
Siddappa,

SOUTH by : Property belongs to Lakshamma.

[Schedule of Sale deed dated 16-03-2015]

“ಬೆಂಗಳೂರು ಗ್ರಾಮಾಂತರ ಜಿಲ್ಲೆ, ದೊಡ್ಡಬಳ್ಳಾಪುರ ನಗರದ 4ನೇ ವಾರ್ಡ್, ರೋಜಿಪುರ, 4 ನೇ ಹಂತಕ್ಕೆ ಸೇರಿದ ಮಾಜಿ ನಂ.2524/1 ರಿಂದ 2524/27 ರ ಹಾಲಿ ನಗರಸಭಾ ಕ್ರಮ ಸಂಖ್ಯೆ:4654 ಮತ್ತು ಹಾಲಿ ನಗರಸಭಾ ಖಾತೆ ಸಂಖ್ಯೆ.2524/ವಿ.ಎಸ್.20. ಸ್ವತ್ತಿನ ನಂ.20 ರ ಬಾಬು ಸೈಟ್ ನಂ.20 ರಲ್ಲಿ ಮೇಲ್ಕಂಡ ಶ್ರೀ ರವಿಕುಮಾರ್ ಜಿ.ಟಿ. ಬಿನ್ ದಿವಂಗತ ವಿ.ತಿಮ್ಮಯ್ಯನವರ ನನ್ನ ಹೆಸರಿನಲ್ಲಿರುವ ಸ್ವತ್ತಿನ ಅಳತೆ ಪೂರ್ವ ಪಶ್ಚಿಮ 30 ಅಡಿಗಳು ಉತ್ತರ ದಕ್ಷಿಣ 40 ಅಡಿಗಳು (30-40) ಅಥವಾ 1200 ಚದರ ಅಡಿಗಳ ಅಳತೆಯುಳ್ಳ ಖಾಲಿ ನಿವೇಶನಕ್ಕೆ ಚಕ್ಕುಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ	:	20 ಅಡಿ ಅಗಲದ ರಸ್ತೆ,
ಪಶ್ಚಿಮಕ್ಕೆ	:	ಕಾರ್ಮಲ್ ಜ್ಯೋತಿ ಶಾಲೆಯ ಸ್ವತ್ತು,
ಉತ್ತರಕ್ಕೆ	:	21 ನೇ ನಂಬರ್ ನಿವೇಶನ,
ದಕ್ಷಿಣ	:	19 ನೇ ನಂಬರು ನಿವೇಶನ.

18. The defendant No.2 in the written statement has admitted that plaintiff has created false katha number which is exclusively owned by defendant No.2. This relevant is at Paragraph No.18 of written statement of defendant No.2 which is as under;

“defendant No.2 most respectfully submits that plaintiff is playing fraudulent game to grab the valuable property from the defendant No.2 by false imposing fabricated, created false katha number to the property which is exclusively owned by defendant No.2.”

19. Therefore the plaintiff is admitting the boundaries of property of defendant No.2 purchased dated 16-03-2015 and sale deed of plaintiff executed in the year 2015 i.e., 21-11-2014 are one and the same. Now these both boundaries are one and the same. It is settled principles of law that where there is a dispute of description of suit property the boundaries will prevail over the extent and survey number or city survey numbers.

20. This principle is grand hold principles right from the Privy Council. The **Hon'ble High Court of Karnataka** has laid down the said principle in the recent decision in the case of **Sri.H.Naganna and Others V/s. Sri.Marilingegowda and Others decided on 06-11-2020 in RSA No.2110/2010 (Declaration and Injunction)**. Therefore, the identification and location of suit property is identified and located by the boundaries shown in the plaint and sale deed of plaintiff and sale deed of defendant No.2 dated 16-03-2015. The defendant No.2 cannot blow hot and cold at the same time. Meaning thereby he cannot admit the location of his property purchased under the sale deed dated 16-03-2015 with the same

boundaries at the same time cannot dispute the identification and location of property of plaintiff with the same boundaries in the sale deed of plaintiff and defendant No.2. Therefore, without wasting any more time on the identification and location of the suit property in a suit for declaration and in an applications 39 Rule 1 and 2 R/w Section 151 of CPC I will proceed for further discussions.

21. The execution of sale deed by the father of plaintiff in favour of one Siddappa in respect of the present identified and located suit property i.e., on 16-03-1989 is not challenged by the defendant No.1 and his family members or by defendant No.2. It is pertinent to note here that defendant No.2 is the brother-in-law of defendant No.1 and both defendant No.1 and 2 are suppose to know this fact of sale deed dated 16-03-1989. It is undisputed fact that the Sy.No.11/1 totally measuring 0-15 guntas and Sy.No.11/1C measuring 0-17 guntas totally measuring 0-32 guntas is granted in the name of father of defendant No.1 way back in the year 1984 i.e., more precisely on 21-06-1984. After the grant in the year 1984 the suit site is transferred to Sri.Siddappa by the father of defendant No.1 on 16-03-1989, Siddappa inturn transferred the suit property in favour of smt.Gowramma W/o. Sri.Krishnappa under sale deed dated 21-02-1994. Plaintiff has purchased the suit property from Smt.Gowramma under sale deed dated 21-11-2014. Now the defendants are contending that all the sale deeds right from the sale deed of Siddappa, Gowramma and plaintiff are invalid sale deeds and they do not convey the title over the suit property in favour of either Siddappa, Gowramma or plaintiff.

On these principles of law the learned counsel for the defendant has relied upon the provisions of Section 61 of Karnataka Land Reforms Act along with the non alienation clause at condition No.10 in the grant certificate. The words used in Section 61 (3) of Karnataka Land Reforms Act is **'invalid'** and not **'void'**. In view of the serious arguments on the validity of the sale deed and declaring it invalid or void. I would like to have academic discussions and difference between the word **'invalid'** and **'void'** used by the legislature in the legislations. For this purpose the external aid of interpretations of statutes can be taken aid of Section 61 of Karnataka Land Reforms Act and Section 4 of Karnataka SC/ST (Prohibition of Certain Lands) Act 1978 are though not analogous provisions, but they are similar provisions. Section 4 of Karnataka SC/ST (Prohibition of Certain Lands) Act, 1978 mandates that the sale deed executed in contravention of Section 4 of Karnataka SC/ST (Prohibition of Certain Lands) Act, 1978 are void documents and not invalid documents. This principle is laid down by **Hon'ble High Court of Karnataka in the recent decision decided on 19-05-2021 in W.P.No.52945/2018** the important principles laid down is as under;

Hon'ble High Court of Karnataka in the case of SriMuniraju Versus State of Karanataka and Others reported in 2021 (4) KCCR 3765 which reads as under;

**"Karnataka Scheduled Castes And
Scheduled Tribes (Prohibition of
Transfer of Certain Lands) Act, 1978,**

Sections 4 and 5 - On 6.11.1939, 2 acres 4 guntas of land was granted by the Sub-Divisional Officer to 'P' with a condition of non-alienation for a period of 20 years - However, 'P' sold the granted land in favour of Govindappa s/o Nanjappa on 24.10.1951, before the completion of the non-alienation period - Thereafter the lands changed hands three times, the last of the transactions being on 17-11-1980, when it was purchased 'R' and 'N' - Transfer is in contravention of the conditions of grant and therefore all the sale transactions were held to be void - Impugned order set aside - Writ petition partly allowed - Matter remanded."

22. Therefore, the sale deeds in respect of land granted under PTCL Act in contravention of Section 4 of Karnataka SC/ST (Prohibition of Certain lands) Act, 1978 and condition of non alienation clause is void document. But that principle and analogy is not applicable to the land granted under the provisions of Karnataka Land Reforms Act. Admittedly, the land grant made in favour of father of defendant No.1 in respect of Sy.No.11/1 measuring 0-32 guntas of Rojipura Village is under the provisions of Karnataka Land Reforms Act.

Section 61 of Karnataka Land Reforms Act does not contemplate that the sale deed of either Siddappa, Gowramma or plaintiff is void unless it is declared as invalid document in an enquiry proceedings by the Assistant Commissioner concerned who is the competent authority or authorized authority for declaring the sale deed or either Siddappa, Gowramma or plaintiff is invalid by his authority by being authorized officer under Rule 37 of Karnataka Land Reform Rules. Admittedly, till today there is no complaint or petition for conducting enquiry for declaring the sale deed of either Sri.Siddappa or Smt.Gowramma or plaintiff as invalid document. The Assistant Commissioner has not initiated any enquiry proceedings in respect of the any above referred sale deeds under the provisions of Section 61 of Karnataka Land Reforms Act R/w Rule 37 of Karnataka Land Reform Rules. Now whether Civil Court can hold that the sale deed executed in favour of either Sri.Siddappa or Smt.Gowramma or plaintiff is invalid document. Certainly not, the reason is that the jurisdiction of the civil Court in respect of the orders passed by the Deputy Commissioner or authorized officer under Section 77, Assistant Commissioner the prescribed authority under Section 83, The Tribunal or Tahasildar is expressly ousted by the provisions of Section 132 (2) of the Karnataka Land Reforms Act for enlightenment of the principles of law and provisions of law the Section 132 of Karnataka Land Reforms Act is reproduced in the case of **R.Ravindra Reddy and Others Vs H.Ramaiah Reddy and Others reported in SLP (Civil) No.6286/2009** which reads as under;

"132. Bar of jurisdiction (1) No civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Deputy Commissioner, an officer authorized under Section 77 , the Assistant Commissioner, the prescribed authority under Section 83, the Tribunal, the Tehsildar, or the State Government in exercise of their powers of control.

No order of the Deputy Commissioner, an officer authorized under sub-section (1) of Section 77, the Assistant . Commissioner, the prescribed authority under Section 83 , the Tribunal, the Tehsildar, the Karnataka Appellate Tribunal or the State Government made under this Act shall be questioned in any civil or criminal court."

23. In the present case the matter in dispute whether the sale deed executed in favour of plaintiff is invalid is within the domain and jurisdiction of the authorized authority or authorized officer i.e., Assistant Commissioner, Doddaballapur under Section 77, 83 and Rule 37 of Karnataka Land Reforms Act.

24. It is argued at length that the alienation of suit property by father of defendant No.1 attracts the offence under Section 192-A of Karnataka Land Revenue Act, 1964. But as on date there is no complaint by the competent authorities either against father of defendant No.1 or Siddappa or Gowramma in this regard. Criminal prosecution in a matter of Land Revenue Acts is a separate mechanism and it has no connection with a civil suit for the relief of declaration. As on date there is no prosecution pending against the original vendor V.Thimmaiah or the purchasers Siddappa, Gowramma and the present plaintiff. Even defendant No.1 has not filed complaint to the competent Revenue Officer stating that the alienation of suit property which is in dispute is in contravention with the provisions of Land Revenue Act and it amounts to an offence under Section 192-A of Karnataka Land Revenue Act, 1964. Therefore, the said facet of the case which was argued at length is irrelevant for consideration of present matter in dispute.

25. The learned counsel for the defendant No.1 and 2 has principally relied upon the principles laid down by **Hon'ble Supreme Court of India in the case of Jharkand State Housing Board Versus Didar Singh and another** reported in **Civil Appeal No.8241/2009**.

26. I have given anxious consideration of the said principles what is laid down in the said decision is again the principles laid down by the Hon'ble Supreme Court of India in the case of **Anathulla Sudhar Versus P.Buchi Reddy (Dead) by LRs and Others reported in (2008) 4 SCC 594** which reads as under;

“A. Specific Relief Act, 1963 – Ss. 5,6,38 and 37 – Recovery of Specific Immovable property – Appropriate remedy in various classes of cases – Where the plaintiff’s title is under a cloud and he does not have possession, held, the remedy is suit for declaration and possession, with or without consequential injunction – Where his title is not disputed or under a cloud but he is out of possession, held, the remedy is suit for possession with consequential injunction – Where there is mere interference with plaintiff’s lawful possession or there is threat of dispossession, held, suit for injunction simpliciter would be sufficient - Words and Phrases – “Cloud over a person’s title” – Property Law – Ownership and title

B. Specific Relief Act, 1963 – Ss. 5, 6 ,38 and 37 – Suit for prohibitory injunction simpliciter relating to immovable property – Nature and scope of – Held, such a suit is concerned with possession only – Therefore, in the absence of necessary pleadings and appropriate issue regarding title (either specific or implied), decision would be given with reference to finding on possession and

not on the question of title – Even if there are necessary pleadings and issue regarding title, the Court may decide that issue only if the matter involved is simple and straightforward and not if it involves complicated questions of fact and law relating to title – In the latter type of cases, the court would, instead, relegate the parties to the remedy of comprehensive suit for declaration of title – the Court should, depending upon the facts of the case, exercise its discretion carefully to decide whether to enquire into title or to refer the plaintiff to a more comprehensive declaratory suit – In the present suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, plaintiff claiming title through a vendor who claimed to be owner in pursuance of an oral gift without mutation of her name in municipal records whereas the defendant claiming his title to the very same property from the original owner whose name as registered owner was continuing in the revenue records – In such circumstances, held, defendant prima facie made out possession following title – Moreover,

contending that the said original owner had himself attested the sale deed executed by the plaintiff's vendor, the plaintiff invoking S.41, Transfer of Property Act and seeking to justify the oral gift by way of "pasupu Kumkumam" under Hindu Law, estoppel and acquiescence – However, defendant denying the said allegation of attestation as well as the allegation of the said oral gift – Such complicated questions, held, could be examined only in a suit for declaration and not in a suit for injunction- mere hardship likely to be caused to the plaintiff by driving him to a fresh round of litigation after the pendency of the suit for."

27. Ultimately the Hon'ble Supreme Court of India in Paragraph No.13 of the judgment has ordered for maintenance of status-quo in view of long pending litigation. The said principles is not relating to the present case i.e., whether the sale deed in favour of plaintiff is invalid or void by application of special provision of law i.e., Karnataka Land Reforms Act.

28. The learned counsel for the defendant has also relied upon the decision of **Hon'ble Supreme Court of India** in the case of **Ambalal Sarabhai Enterprise Limited Vs. K.S.Infraspac I.I.P. Limited** reported in AIR 2020 SC 307.

29. What is laid down in the said case is that the plaintiff has to make out a strong prima-facie case on the basis of undisputed facts and the conduct of plaintiff is very relevant consideration for the purpose of injunction. This principle is again reiterated the cardinal principles of temporary injunctions under Section 36 and 37 of Specific Relief Act and controlled by the Section 41 of Specific Relief Act. The said principles are settled principles of law. The conduct of the party and its consideration in the matter of injunction is very clearly enacted in Section 41 (i) of Specific Relief Act for better understanding the relevant provision is reproduced as under;

“...Section 41 Injunction when refused

(a) to (h).....

(i) When the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.

30. This principle is also laid down by the **Hon’ble Supreme Court of India** in the celebrated case of Gujarath Pottling Company Limited V/s. Coca-Cola Company and other AIR 1995 SC 2372. Now the word plaintiff in Section 41(i) of Specific Relief Act includes the defendant who resists the injunction application this principle of law is well settled there is no dispute regarding the same. The same is laid down by the **Hon’ble Supreme Court of India** in the case of **M/S. Gujarath Pottling Co. Ltd. & Ors Vs. The Coca Cola Co. and**

Ors reported 1995 SCC (5) 545. The relevant material in the said judgment is as under;

“These consideration will arise on only in respect of the person who seeks an order of injunction under order 39 rule 1 or 2 of code of civil procedure but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings.”

31. Therefore, Section 41 (i) of Specific Relief Act is applicable both plaintiff and defendants in the matter of consideration of applications under order 39 Rule 1 or 2 or 4 of CPC.

32. Now the conduct of plaintiff and defendant No.1 and 2 is to be evaluated and ascertained. The plaintiff has purchased the suit property in the year 2014 which was sold by the father of defendant to Siddappa under the mother deed dated 16-03-1989 and in between these two sale deeds there was one more sale deed in favour of Gowramma on 21-02-1994. The defendant No.1 has not challenged all these sale deeds. Admittedly, both plaintiff and defendant No.1 are advocates by profession and practicing in courts of law at Doddaballapur. Meaning thereby plaintiff and defendant No.1 are not non practicing advocates. Both plaintiff and defendant No.1 has got legal knowledge and legal awareness about their rights and duties in a matter of civil rights to the property. There is only

05 years difference in the age of plaintiff and defendant No.1 as per the title sheet of the plaint. Plaintiff is 42 years and defendant No.1 is 37 years. Both of them have put up the practice of almost 05-10 years. Court has taken judicial notice that both have civil practice in this Court and they have civil matters. But inspite of it the defendant has not challenged the sale deeds executed from 1989 to 2014 till today. The defendant No.1 even not made counter claim in this suit. The reasons and explanation for the same is not spelt out in the written statement of defendant No.1. It is undisputed fact that defendant No.2 is brother-in-law of defendant No.1, but this fact is not pleaded in the written statement either defendant No.1 or defendant No.2. When the sale deed of plaintiff is on 2014 and mother deed is of 1989, then there was no right for the defendant No.1 to include the suit property in the partition deed dated 30-04-2009. As on the date of partition the suit property was not available for the partition to the defendant No.1. As on the date of sale deed in favour of defendant No.2 by defendant No.1 the defendant No.1 had not got transferable title to transfer the suit property in favour of defendant No.2. Therefore, there is suppression of fact by defendant No.1 and even defendant No.2. Though defendant No.1 is practicing Advocate. From going through the entire case papers bundle and bundle of documents it appears that the conduct of defendant No.1 and 2 is not fair and the hands of defendant No.1 and 2 are not clean.

33. Now coming to the conduct of plaintiff. Plaintiff has pleaded in the plaint that defendant No.2 on the basis of sale deed executed by defendant No.1 in his favour dated 16-03-

2015 has denied the title of plaintiff over the suit property and defendant No.2 has threatened to sell the suit property and to dispossess the plaintiff from the suit property. Disputedly, sale deed in favour of defendant No.2 is executed on 16-03-2015 the cause of action for the suit is shown to be 10-06-2019. The plaintiff has filed the suit for declaration of title on 31-07-2019 i.e., within 40 days from the date of cause of action and within three years from the date of sale deed executed in favour of defendant No.2 and knowledge of the same to the plaintiff. The plaintiff has approached the civil Court for redressal of his remedies in accordance with by filing title suit. The plaintiff has neither file complaint against the father of defendant No.1 to the revenue officers for initiating action under Section 192-A of Karnataka Land Revenue Act. The plaintiff is pressing the present applications for the reasons that during the Dasara vacation the defendant No.2 had filed suit in O.S.No.420/2022 before the Court of Civil Judge, Junior Division, Doddaballapur and obtain exparte injunction against the present plaintiff vide orders dated 01-10-2022 i.e., last working day before the Dasara vacation commences. Therefore, the documents pertaining to the same are also produced by the plaintiff under memo dated 11-10-2022. This fact shows that there is nothing fishy in the conduct of plaintiff. If the defendant No.2 did not have filed O.S.No.420/2022 the plaintiff in this suit would have proceeded with the trial and the case in this suit is posted for cross examination of PW.1 before taking up these I.A.'s for consideration due to the fact of filing of O.S.No.420/2022 by defendant No.2 and obtaining exparte injunction against the plaintiff.

34. From the some total undisputed facts of the case the suit land Sy.No.11/1 totally measuring 0-32 guntas was granted to father of defendant No.1 Sri.V.Thmmaiah vide Form No.10 dated 21-06-1984 and the mother deed and first alienation is made by the original grantee V.Thimmaiah in favour of Siddappa on 16-03-1989. Admittedly, there is 15 years non alienation clause as contained in Section 61 of Karnataka Land Reforms Act. Now the moot point is that whether this Court can embark upon the said facet of the case while considering the present application at I.A.No.I and II i.e., whether civil Court has jurisdiction to embark upon the matters falling within domine of revenue courts.

35. The learned advocate for plaintiff has relied upon Section 132 of Karnataka Land Reforms Act. For better understanding **Section 132 of Karnataka Land Reforms Act** is reproduced as under. In the case of **R.Ravindra Reddy and Others Vs H.Ramaiah Reddy and Others reported in SLP (Civil) No.6286/2009.**

36. The learned advocate for the plaintiff to substantiate his contention of bar of jurisdiction of civil Court is relying on the principles laid down by **Hon'ble Supreme Court of India** in the case of **R.Ravindra Reddy and others V/s. H.Ramaiah Reddy and others** reported in **(2010) 3 SCC 214** which reads under;

**“A. Tenancy and Land Laws – Karnataka
Land Reforms Act, 1961 (10 of 1962)
Ss. 132(2), 133 (1) (i) and 48 – Bar on**

**civil Court's jurisdiction – Applicability
– Issues being whether (1) suit land was
agricultural land and (2) one A claiming
to be occupancy tenant was in
possession – On the said issues,
jurisdiction of civil Court, held, was
barred by Ss.132(2) and 133(1) (i) – Civil
Procedure Code, 1908 – S.9.”**

37. The learned advocate to counter the above said arguments of the learned Advocate for plaintiff is relying upon the principles laid down by **Hon'ble Supreme Court of India** in the following case of **Smt.Narayanamma and Others Vs. Govindappa and Others** reported in **AIR 2019 SCC 4654** which reads as under;

**“ Section 61(1) (3) Specific performance
of contract – Agreement to sell –
predecessor-in-title executed registered
mortgage deed in favour of plaintiff –
Grant of suit property is of year 1983
and transfer in question is of year 1990
which is within prohibited period of 15
years – Agreement executed during non-
alienation period of 15 years is illegal
as hit by S.61 of Act – Predecessor-in-
title and plaintiff are equally
responsible for illegal agreement – Suit**

for specific performance, not maintainable.”

and also the provisions of Section 23 of Contract Act. For better understanding **Section 23 of Contract Act** is reproduced as under;

S. 23. What considerations and objects are Lawful and what not. The consideration or object of an agreement is law full, unless –

It is forbidden by law 53 or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

38. Section 23 of Contract Act contemplates that any contract entered in contravention of any provisions of law inforce is a void contract and this principle of law is also considered by **Hon’ble High Court of Karnataka in the case of Uma V/s. Munireddy dead by LRs reported in 2021 SCC online KAR 15034**. The emphasis on Section 23 of Contract

Act is also discussed in the said decision at length and again the principles laid down by the **Hon'ble Supreme Court of India** in the case of **Narayanamma and another V/s. Govidappa and Others reported in AIR 2019 SC 4654** is referred and relied and followed by the **Hon'ble High Court of Karnataka**.

39. The principles laid down by the **Hon'ble Supreme Court of India** in the case of **R.Ravindra Reddy and others V/s. H.Ramaiah Reddy and others** reported in **(2010) 3 SCC 214** is laid down by the bench of two judges of Hon'ble Supreme Court of India vide its judgment dated 17-02-2010. Now the principles in respect of the provisions of Section 61 of Karnataka Land Reforms Act is laid down by the three Judge Bench of Hon'ble Supreme Court of India. The principles laid down by **Hon'ble Supreme Court of India** in the following case of **Smt.Narayanamma and Others Vs. Govindappa and Others** reported in **AIR 2019 SCC 4654** is directly on application of Section 61 (1) and (3) of Karnataka Land Reforms Act which is the point at dispute in the present case. The principles laid down by the **Hon'ble Supreme Court of India** in the case of **R.Ravindra Reddy and others V/s. H.Ramaiah Reddy and others** reported in **(2010) 3 SCC 214** are the special principles laid down in respect of bar of jurisdiction of civil Court under Section 132 of Karnataka Land Reforms Act. Now the decision of Hon'ble Supreme Court of India in the case of **Smt.Narayanamma and Others Vs. Govindappa and Others** reported in **AIR 2019 SCC 4654** will prevail over the

principles laid down in the case of **R.Ravindra Reddy and others V/s. H.Ramaiah Reddy and others** reported in **(2010) 3 SCC 214** by virtue of the principles of precedent law contemplated under Art. 141 of Constitution of India. The Hon'ble Supreme Court of India in the case of **Smt.Narayanamma and Others Vs. Govindappa and Others** reported in **AIR 2019 SCC 4654** has come to conclusion that the transfer effected within the prohibited period of 15 years under Section 61 (3) of Karnataka Land Reforms Act is illegal and hit by Section 61 of Karnataka Land Reforms Act. Not only that the Hon'ble Supreme Court of India has further went on to laid down principles that the suit itself is not maintainable on the basis of such documents which are in contravention of Section 61 of Karnataka Land Reforms Act. In the present case it is undisputed fact that the mother deed in favour of Siddappa executed in 1989 is in contravention with Section 61 of Karnataka Land Reforms Act and on the basis of the this mother deed the sale deeds in favour of Gowramma and the plaintiff are executed in the year 1994 and 2014. Meaning thereby the very mother deed of 1989 executed in favour of Siddappa is in contravention with provisions of Section 61 of Karnataka Land Reforms Act. The principles of Section 61 of Karnataka Land Reforms Act is again considered by the **Hon'ble High Court of Karnataka** in the case of **Gurumallappa and aothers V/s. Anjaneyaswamy Trust, Gundusagara, Sakkarayapatna Holbi**, reported in **AIR 2021 KAR 35** which reads as under;

“Specific Relief Act (47 of 1963). S. 20 – Karnataka Land Reforms Act (10 of 1962). S. 61 Specific performance of contract – Relief of – Tenant was granted occupancy rights – Tenant executed sale agreement with another within prohibited period of 15 years as stated in S. 61 – Contract in violation of S.61. void and not enforceable – Relief of Specific performance of sale agreement, not granted.”

40. Wherein the Hon’ble High Court of Karnataka has laid down that the contract in violation of Section 61 of Karnataka Land Reforms Act is void and not enforceable. This principle is also binding precedent on this Court and the said principles to be followed by the Court by judicial discipline contemplated in law of precedents. Hence, now by the latest principles of Hon’ble Supreme Court of India in the case of **Smt.Narayanamma and Others Vs. Govindappa and Others** reported in **AIR 2019 SCC 4654** and **Hon’ble High Court of Karnataka** in the case of **Gurumallappa and aothers V/s. Anjaneyaswamy Trust, Gundusagara, Sakkarayapatna Holbi**, reported in **AIR 2021 KAR 35** renders the sale deeds executed in between original vendor Sri.V.Thimmaiah in favour of Sri.Siddappa and Sri.Siddappa in favour of Smt.Gowramma and Smt.Gowramma in favour of plaintiff is either hit by Section 61 of Karnataka Land Reforms Act or void and

enforceable agreement. Hence, by the application of the said principles of law the sale deed in favour of plaintiff or his vendor or his vendors vendor either becomes void or invalid or hit by Section 61 of Karnataka Land Reforms Act in the light of principles of Hon'ble Supreme Court of India and Hon'ble High Court of Karnataka. When the foundational document of plaintiff i.e., sale deed dated 16-03-1989 itself is either void or invalid by the principles of law laid down by the precedent courts, then that document cannot be relied upon for making out the prima-facie case by the plaintiff. The subsequent document that are relied upon by the plaintiff are the genesis out of the foundational document i.e., sale deed of plaintiff.

41. The memo of citations is produced by the plaintiff's Advocate which reads as under;

1. (1999) AIHC 693: ILR (Karnataka) 1626: (1999) 1 Kant LJ 502
2. Civil Appeal No.2166/2009 Vivek M.Hinduja and Ors v/s. M.Ashwatha dated 06-12-2017.
3. W.P.No.5478/2020(LR) Balamani Jayaprakash v/s. The State of Karantaka, Hon'ble High Court of Karnataka dated 08-06-2022.
4. W.P.No.6620/2014 (SC/ST) Ravi Amaresh Kumar v/s. Deputy Commissioner and others, Hon'ble High Court of Karnataka dated 11-09-2020.
5. Judgment dated 15-02-2022 Saroja W/o. Sharanappa Musakinabavi v/s. Basavaraj S/o. Gurupadappa Beeranur.

6. Judgment dated 25-10-1929 Siddik Majomed Shah v/s. Saran and others.
7. 1995 AIR 2372 , 1995 SCC (5) 545.
8. Civil Appeal No.4125/2009 dated 21-04-2009.
9. News paper Deccan Herald copy dated 14-06-2013
10. RSA No.2110/2010 (Declaration and Injunction)
11. S.L.P. (Civil) No.6286/2009.

42. The memo of citations is produced by the defendants Advocate which reads as under;

1. 1998 (Kar) 583
2. 1985 (Kar) 330
3. civil Appeal No.824/2009 (SC)
4. AIR 2014 SC 937
5. AIR 2020 SC 307
6. AIR 2008 SC 2291
7. AIR 2004 SC 3957
8. Offence and penalties (192-A)
9. 1968 AIR (SC) 534
10. AIR 2021 KAR 35 (AIR) Online 2020 Kar 2491)
11. AIR 2019 SC 4654
12. RAS No.2221/2005 (Late Laxman Lakkappa Durgannavar V/s. Late Donakappa Fakirappa on 12th March 2020
13. 1959 (SC) 170
14. 1961 (SC) 321
15. 1969 (SC)398
16. AIR 2016 SC 737

17. High Court of Orissa, W.P.No.(C) 20271/2014
(Babita Padhy V/s. State of Orisha and Others on
5th December 2014.

43. I have read over the principles laid in the above said citations and considered the same and applied the same whenever they are applicable and distinguished and whenever it is required.

44. Therefore, I am of the opinion that the plaintiff has not made out prima-facie case for grant of temporary injunction orders as claimed in I.A.No.I and II. Hence, point No.1 in negative.

POINT No.2 and 3:

45. 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.4:

46. In view of my findings on point No.1 to 3, I proceed to following;

ORDER

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

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 19th day of October, 2022.)

(ARVIND SAIBANNA HAGARGI)

Senior Civil Judge & JMFC.,
Doddaballapur.