

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 20th day of October, 2022

O.S.No.379/2021**Plaintiffs:**

1. Sri.Chowdahanumahia,
S/o. Late Chowdahia, A/a. 32 years,
2. Smt.Saraswathamma,
D/o. Late Chowdahia,
W/o. Bylappa, A/a. 29 years,
3. Smt.Bhagyamma,
D/o. Late Chowdahia, A/a. 26 years,
W/o. Nagaraju,

All are R/at. Sakkare Gollahalli Village,
Doddabelavangala Hobli,
Doddaballapura Taluk,
Bengaluru Rural District.

(Represented by Advocate
Sri.Alahalli Krishnamurthy)

Versus**Defendant:**

1. Sri.Shikaranna,
S/o. Late Channabasappa,
A/a. 50 years,
R/at. Sakkare Gollahalli Village,
Doddabelavangala Hobli,
Doddaballapura Taluk,
Bengaluru Rural District.

2. Sri.Kemparaju.S.A.,
S/o. Sri.Appannappa.M., A/a. 52 years,
R/at. Sangharasanahalli Village,
Doddabelavangala Hobli,
Doddaballapura Taluk,
Bengaluru Rural District.

(Represented by Advocate
Sri.Ravi.M. for D2,
D1-Dead for steps to LR's of D1.)

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ORDERS ON I.A.No.I & III

These orders arise out of I.A.No.I filed by the plaintiff under order 39 Rule 1 and 2 R/w Section 151 of CPC with a prayer to restrain defendant from interfering with peaceful possession of plaintiffs over suit property and I.A.No.III filed by the defendant No.2 under order 7 Rule 11 (a) and (d) R/w Section 151 of CPC to reject the plaint for want of cause of action and barred by limitation.

FACTS IN BRIEF:-

Description of suit schedule property:

All the part and parcel of property bearing old survey No.30, new Sy.No.30/1 measuring 00-28 guntas out of 5 acre 28 guntas land situated at Sakkaregollahalli Villae, Doddabelavangala Hobli, Doddaballapura Taluk and bounded on;

EAST by : Property belongs to Veeradasappa,
WEST by : Property belongs to Veeranna,
NORTH by : Property belongs to Mallanna,
SOUTH by : Property belongs to Chowdaiah.

This is a title suit of plaintiffs based on Gift Deed dated 12-05-1978 and consequential relief of permanent injunction restraining the defendants from causing interference in peaceful possession and enjoyment of the plaintiffs over suit property and costs.

3. The case of plaintiffs is that the land Sy.No.30 with new Sy.No.30/1 totally measuring 09-0 acre 0-28 guntas. The great-grandfather of plaintiff Anjinaiah was said to have sold the suit property in favour of father of defendant No.1 namely Channabasappa. But the said the great-grandfather of plaintiff and his family members were cultivating the said lands for 60-65 years as coolie in the family of defendant No.1. The father of defendant No.1 Channabasappa was said to have not paid any coolie or wages to the great-grandfather of plaintiff and grandfather of plaintiff namely Kuluvadappa. It is specific case of plaintiffs that in consideration of the coolie and wages the father of defendant No.1 Channabasappa is said to have executed Gift deed in favour of father of plaintiff Kuluvadappa dated 12-05-1978 in respect of present suit schedule property i.e., 0-28 guntas out of 09 acres 0-28 guntas. It is specific assertions that the plaintiffs are in possession and enjoyment of the suit property since from 1978 till date and also 1-0 acre of land is said to be transferred by the defendant No1 in the name of Lakkappa who was the brother of grandfather of plaintiff. It is the case of plaintiffs that there was partition in between the sons of defendant No.1 in remaining 8-0 acres vide partition deed dated 1990 an extent of 4-0 acre was said to be fallen to the share of defendant No.1 out of 8 acres.

4. It is specific case of plaintiffs that after the death of the grandfather of plaintiff and father of plaintiffs are said to be lawful possession and enjoyment of the suit property, but due to the lack of worldly knowledge the plaintiffs are said to be not got effected Khata in the name of either grandfather of plaintiffs or father of plaintiffs Chowdappa and plaintiffs.

5. It is the allegation of plaintiffs that the defendant No.1 without having any right and title is said to have executed sale deed in favour of defendant No.2 in respect of suit property taking undue advantage of recording his name in the RTC of suit land. The defendant No.1 is said to have right to transfer only 4 acres fallen to his share in suit Sy.No.30/1 and defendant No.1 is said to be not having any right and title to transfer the suit property. It is specific case of plaintiffs that on 20-05-2021 the defendants are said to have made attempt to trespass and tried to remove the nuts in the trees. Hence, the present suit by the plaintiffs.

6. The defendant No.1 has expired in pendency of suit. The defendant No.2 has appeared and filed his written statement. In the written statement the defendant No.2 has denied the entire assertions and allegations of the plaint in toto in para wise.

7. The defendant No.2 has come up with a specific case that defendant No.1 become absolute owner of land to an extent of 5-0 acre 0-35 guntas by virtue of the sale deed dated 19-04-2021 executed by one Sri.K.S.Basavaraju S/o. Late Srikaranna. It is further the case of defendant No.2 that as per the sale deed dated 19-04-2021 the vendor of defendant No.2 is said to have

put to defendant No.2 the possession of the property sold under the sale deed dated 19-04-2021. It is also the case of defendant No.2 that the suit of plaintiff is said to be bad for non joinder of the family members of vendor of defendant No.2. The defendant No.2 has further contended that the plaintiffs are misusing the Gift deed dated 12-05-1978 and claim in the suit is not clear. The defendant No.2 has also contended that the plaintiffs are seeking the title of suit on the basis of Gift deed dated 12-05-1978 and suit is filed in the year 2021. Therefore, the defendant No.2 has contended that suit of plaintiff is bared by limitation.

8. The plaintiffs have filed I.A.No.I under order 39 Rule 1 and 2 R/w Section 151 of CPC with a prayer to restrain the defendants from interfering with plaintiffs possession and enjoyment over the suit property. An affidavit is filed by plaintiff No.1 along with I.A.No.I. Plaintiff No.1 has reiterated the entire plaint assertions and allegations in the affidavit accompanying I.A.No.I.

9. The defendant No.2 has filed memo stating that the contents of his written statement be treated as objections to I.A.No.I.

10. The defendant No.2 has filed I.A.No.III under order 7 Rule (a) and (d) of CPC for rejection of plaint for want of cause of action and barred by limitation. Defendant No.2 has filed affidavit along with I.A.No.III. The substance in the affidavit is the prayer columns of the plaint are said to be not clear. The defendant No.2 has contended that there is no cause of action for the plaintiffs. The possession if any of the plaintiffs will be

permissive possession and even not adverse possession or possession on title. The defendant No.2 further contended that plaintiffs have drafted the plaint cleverly to fix the suit within the limitation. Hence, defendant No.2 prayed to reject the plaint.

11. The plaintiff has filed separate and independent objections to I.A.No.III. In the plaint averments and assertions and allegations are reiterated and prayed to reject I.A.No.III.

12. Heard both sides on I and III.

13. 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?

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 is refused?

4. Whether the plaint of the plaintiffs is liable to be rejected under order 7 Rule 11 (a) to (d) r/w Section 151 of CPC as prayed by defendant No.2?

5. What order?

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

- Point No.1:** In affirmative
Point No.2: In favour of plaintiff
Point No.3: Plaintiff will be put to irreparable loss if I.A.No.I is rejected.
Point No.4: In negative
Point No.5: As per final order as per the following;

:-REASONS:-

Point No.1 & 4:

15. These two points are interlinked to each other. If the defendant demonstrates on the basis of plaint averments and suit documents that suit of plaintiffs is liable to be rejected, then the plaintiff has no prima-facie case in their favour of plaintiff for consideration of I.A.No.I. On the contrary if the defendant fails to demonstrate that there is no cause of action for the plaintiff to file the suit and suit of plaintiff is barred by limitation then the plaintiff has a prima-facie case for consideration of I.A.No.I. Therefore, these two points are taken for discussions together. Before going further I am duty bound to have glimpse of order 7 Rule 11 which reads as under;

- a. where it does not disclose a cause of action;**
- b. where the relief claimed is undervalued, and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;**

- c. where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper with a time to be fixed by the Court, fails to do so;
- d. where the suit appears from the statement in the plaint to be barred by any law;
- e. where it is not filed in duplicate.
- f. where the plaintiff fails to comply the provisions of Rule 9.

16 The plaint averments and suit documents required to be taken in to consideration for considering the application under order 7 Rule 11 for rejection of plaint. This principle of law is laid down by **Hon'ble Supreme Court of India in the following case (2020) 3 Indian Civil Cases 448 where in it is held that -**

“Civil Procedure Code, 1908, Order 7 rules 11(a) and 14 - Documents filed along with plaint, are required to be taken into consideration for deciding application U/o. 7 R.11 (a) of C.P.C. - When document referred in the plaint, forms basis of plaint, it should be treated as a part of plaint.”

and also in the case of **Soumitra Kumar Sen v. Syamal Kumar Sen**, reported in (2018) 5 SCC 644 where in it is held that –

“Civil Procedure Code, 1908

- **Or, 7 R. 11, S. 11 and Or.2 R.2 – Rejection of
plaint on grounds of res judicata, which
required consideration of pleadings in written
statement – Permissibility – Held, while
considering application for rejection of plaint,
averments in plaint must be considered and
not what is stated in written statement.”**

also principles laid down by the **Hon’ble Supreme Court of India** in the case of **H.S. DEEKSHIT & ANR. versus M/S. METROPOLI OVERSEAS LIMITED & ORS.** reported in **2022 LiveLaw (SC) 703** which reads as under;

**“ Code of Civil Procedure, 1908; Order VII Rule
11 - Averments in the plaint alone are to be
examined while considering an application for
rejection of plaint - No other extraneous factor
can be taken into consideration.**

17 This is an application filed by the plaintiff against the defendants under order 39 Rule 1 and 2 of C.P.C. for interim relief of injunction. The relief of interim injunction is governed by order 39 Rule 1 and 2 of CPC and Section 37 of Specific Relief Act. The plaintiff has filed the present application under order 39 Rule 1 and 2. Therefore, plaintiffs have 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 CPC. 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.”

18. In the present facts of the case the plaintiffs are seeking the title over the suit property under the Gift deed executed by the father of defendant No.1 Channabasappa in favour of grand father of plaintiff Kuluvadappa dated 12-05-1978. This is specifically pleaded in the plaint by the plaintiffs. The defendant No.2 is contesting the suit of plaintiffs as denied the execution of the above referred Gift deed in the written statement. The defendant No.2 has asserted that he has acquired the title over an extent of 5-0 acres 0-35 guntas in Sy.No.30/1 executed by one Sri.K.S.Basavaraju S/o. Late Srikaranna. Admittedly, the defendant No.2 has not made counterclaim of title on the basis of sale deed dated 19-04-2021. It is well settled principles law that while considering I.A.No.III under order 7 Rule 11 (a) and (d) or other clauses the plaint averments and suit documents are relevant and germane and the written statement contentions and documents of defendants are irrelevant. But while considering

I.A.No.I under order 39 Rule 1 and 2 of CPC the Court has got power to look into both plaint averments and allegations, written statement contentions and allegations, suit documents and documents of defendants.

19. For consideration of the I.A.No.III the plaint averments and suit documents are looked into. The plaintiffs have produced the original Gift deed executed in favour of their grand father Kuluwadappa executed by Channabasappa dated 12-05-1978. The plaintiffs have specifically pleaded in the plaint averments that the though the Gift deed executed and revenue entries are not effected in favour of father of plaintiffs. The plaintiffs have based the suit on the basis of Gift deed and they are claiming the title by adverse possession on the basis of Gift deed and possession acquired and continued under this Gift deed. Whether the possession of plaintiffs is possession by title under Gift deed or permissive possession or adverse possession is a matter of trial. Now it is settle law that plaintiffs can also seek the relief of adverse possession in the light of the principles laid down by **Hon'ble Supreme Court of India has decided Civil Appeal No.7764/2014 in the case of Ravindar Kaur Girewal and Others V/s. Manjit Kaur and Others** this appeal is decided on 07-08-2019. By this judgment in the case of **Ravindar Kaur Girewal and Others V/s. Manjit Kaur and Others in 2019 (8) SCC 729**. The Paragraph No. 61 of the judgment in **Ravindar Kaur Girewal and Others V/s. Manjit Kaur and Others case** is relevant for my consideration which needs to be focused at this stage which reads as under –

“61. resultantly, we hold that the decisions of Gurudwara Saheb V/s. Grama Panchayath Village Siritala (Supra) and the decisions relying it in the state of Uttarkand V/s. Mandir Sri Lakshmeesh Siddh maharaj (Surpa) and Dharpal (dead) through LRs V/s. Punjab wakfs board (Supra) cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Art. 65 of Limitation Act and there is no bar under the Limitation Act, 1963 to sue on the aforesaid basis in the case of infringement of any rights of plaintiff.”

20. The plaintiffs all along in the plaint are claiming their possession and nature of their possession is again a matter of trial. The defendant No.2 is claiming his possession under the sale deed dated 19-04-2021. The defendant No.2 has not stated that till 12-05-1978 till 19-04-2021 who were in possession of suit property. The plaintiffs have shown the cause of action for the suit on 20-05-2021 on the execution of sale deed infavour of defendant No.2 on 19-04-2021. Now whether the Gift deed is a registered Gift deed and confers any title in favour of grandfather of plaintiffs Kuluvadappa and the father of plaintiffs Chowdappa and in favour of plaintiffs is again a matter of trial. From the plaint averments the plaintiffs have specifically asserted the possession over the suit property and their possession can only

the dispossessed by way of the due process of law i.e., recovery of possession from the plaintiffs by the original owner. In that event also the plaintiffs have right to seek title over the suit property by adverse possession. As regarding the prayer columns referred in the affidavit accompanying I.A.No.III the defendant No.2 has contended that the prayer is not correct and the plaintiffs are seeking the adverse possession on the basis of Gift deed dated 12-05-1978. In the affidavit itself the defendant No.2 has contended that at the most the possession if any of the plaintiffs may be permissive possession this is clear from Paragraph No.8 of the affidavit of defendant No.2 filed along with I.A.No.III. The plaintiffs who are in possession have cause of action to claim title over suit property either by way of adverse possession or based on the Gift deed. Whether the possession is passed over to the plaintiffs under the Gift deed which is registered or not which is again a matter of trial. All kinds of possession are not only the permissive possession and possession on title there can be the epithet of adverse possession to in respect of immovable properties. The plaintiffs have contended that the cause of action for the suit has arose on 20-05-2021 when the defendant No.2 has interfered with possession of plaintiffs over suit property this is clear from Paragraph No.12 of the plaint. Therefore there is cause of action for the plaintiffs to file the suit. Now coming to limitation it is true that plaint can be rejected under order 7 Rule 11(d) if the plaint averments exfacie discloses that it is barred by limitation. But in the present case the title of plaintiffs is denied by the defendant No.2 in the year 2021 on the basis of sale deed dated 19-04-2021. Prior to that the vendor of defendant No.2 has

neither denied the title of plaintiffs nor recovers the possession of suit property from the plaintiffs by due process of law. The limitation for title suit begins to run when the title is denied by the adversary party or when the any person is interested in denying the title of plaintiffs. Therefore, I am of the opinion that the limitation will begin from the date of sale deed in favour of defendant No.2 dated 19-04-2021 and not from 12-05-1978. This is so because from 1978 till 2021 no one has denied the title of plaintiffs and possession of plaintiffs over suit property. Hence, I am of the opinion that the defendant No.2 has miserably failed to demonstrate that the plaint of the plaintiffs is liable to be rejected either under order 7 Rule 11 (a) or (d) of CPC.

21. The plaintiffs by virtue of their pleadings and affidavit filed along with I.A.No.I and the documents i.e., the Gift deed dated 12-05-1978 also in view of the fact that defendant No.2 has not made clear that from 12-05-1978 when the defendant No.1 has acquired the possession of suit property and how did he acquired the possession of suit property from the plaintiffs either by filing the suit for recovery of possession or otherwise is not spoken by the defendant No.2 in the written statement. The defendant No.2 in the written statement has contended that at the most the possession of plaintiffs' permissive possession and not adverse possession. Whether the plaintiffs have derived the title over the suit property under the Gift deed dated 12-05-1978 or perfected their title over suit property by adverse possession is a matter of evidence at the trial. When the possession was with plaintiffs under the Gift deed dated 12-05-1978, then the factum of handing over of possession of suit property by the father of

defendant No.1 i.e., the vendor of the defendant No.2 under the sale deed dated 19-04-2021 is also a matter of evidence at the trial. Hence, considering all these facts the plaintiffs have made out a case to go for trial and there by made a prima-facie case for consideration of I.A.No.I. Hence, I answered point No.1 in affirmative and point No.4 in negative.

Point no.2 and 3:

22. The plaintiffs have made out a prima-facie case by my findings on point No.1. Now it is prima-facie discloses that the possession of suit property is with plaintiffs either on the basis of Gift deed dated 12-05-1978 or in adverse possession. Whether the plaintiffs have permissive possession or adverse possession is again the matter of trial. But the fact that prima-facie exposed is that plaintiffs are in possession either way, either on the basis of Gift deed or as permissive possession or adverse possession. There is no pleadings in the written statement that when did the vendor of defendant No.2 recover the possession of suit property from the ancestors of plaintiffs i.e., grandfather of plaintiffs Sri.Kuluvadappa and father of plaintiffs Sri.Chowdaiah. This fact is foundation fact on the factum of possession in the suit property. If the possession from the father of plaintiffs and grandfather of plaintiffs is not taken over by the defendant No.2 or their father, then how come the possession is transferred to the defendant No.2. A person may have title over the suit property, but he may not be in possession. So also a person may be in possession of the suit property without title. In such cases possession matter in cases of interim injunction for protection of

possession and not the title. In the present case now the possession of suit property appears to be with plaintiffs in the absence of any recovery of possession decree against the plaintiffs or plaintiffs ancestors and defendants or their ancestor. Under such circumstances the plaintiffs have got right to defend their possession and to protect their possession the plaintiffs have prayed for interim injunction order in I.A.No.I to restrain the defendants from causing interference in the possession of plaintiffs over suit property. The very counter assertions made by the defendant No.2 in the written statement on the basis of sale deed dated 19-04-2021 and the very fact that denial of title and possession of plaintiffs over suit property discloses that there is threat to the possession of plaintiffs over suit property at the hands of defendants. Such being the fact if the defendants are not enjoined, then it is the plaintiffs who will be put comparably more inconvenience than the defendants. The fact i.e., relevant to this point is that the defendant No.2 has not made any counter claim and not filed any application under order 39 Rule 1 and 2 R/w Section 151 of CPC or 39 Rule 4 of CPC either to protect his possession or to vacate the interim injunction order. Ofcourse there is no interim injunction orders. If at all the possession of defendant No.2 over the suit property was genuine and on facts then nothing prevented the defendant No.2 from making counter claim or filing I.A. under order 39 Rule 1 and 2 R/w Section 151 of CPC against the plaintiff restringing the plaintiffs from causing interference with the possession of defendant No.2 over the suit property. Even otherwise the defendant No.2 has not filed any independent suit against the plaintiffs and obtained any interim injunction order

against the plaintiffs. Therefore, if the injunction is refused then the plaintiffs will be put to irreparable loss. Hence, I answered point No.2 and 3 in favour of plaintiffs.

Point No.4:

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

ORDER

I.A.No.I filed by the plaintiffs under order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby allowed.

The defendants, his agents, servants or anybody acting on their behalf are here by restrained from interfere with the peaceful possession and enjoyment of the suit property till further orders.

I.A.No.III filed by the defendant No.2 under order 7 Rule 11 (a) and (d) R/w. Section 151 of CPC is hereby rejected.

Draw decree interms of orders on
I.A.No.III.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 20th day of October, 2022.)

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