

KABR610135982022



**IN THE COURT OF PRL. CIVIL JUDGE & J.M.F.C.
AT NELAMANGALA**

Present: Sri.Deepu M.T. B.A.L, LL.B.
Prl. Civil Judge & J.M.F.C.,
Nelamangala.

Dated this 11th day of March, 2024

ORIGINAL SUIT NO. 438/2022

Plaintiff: Manjunath,
S/o late Channakrishna,
Aged about 34 years,
R/at Gddalahalli village,
Kasaba Hobli,
Nelamangala Taluk,
Bengaluru Rural District.
(By Sri H.V.S.G., Advocate)

V/s

Defendants: 1. Rajanna
S/o late Thirumale Gowda,
Aged about 52 years,
R/at Geddalhalli village,
Kasaba Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

2. Smt Lakshamma,
W/o late Thirumalegowda,
R/at Kennchanahalli village,
Kasaba Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

(By Sri. K.R.M., Advocate)

ORDERS ON I.A.NO.I

The plaintiff has filed this application Under Order 39 Rule 1 and 2 of Civil Procedure Code praying this court to grant interim order by restraining the defendants and their agents, henchmen or any person claiming under them by interfering with the peaceful possession and enjoyment of plaintiff over the plaint schedule property pending disposal of the suit. The description of plaint schedule property is as hereunder.

Schedule Property:

All that piece and parcel of immovable land bearing Sy.No.22/1A New No.22/1A1, measuring 18 guntas and the land bearing Sy.No.22/1B measuring 22 guntas in total 1 acre having common boundaries to both properties situated at Geddalahalli Village, Kasaba Hobli, Nelamangala Taluk, Bangalore Rural District bounded on;

East : Land belong to Narasappa,
West : Land of Revanna,

North: Land of Venkatappa
South: Land of Seethanna and Mayanna.

2. In the annexed affidavit the plaintiff has sworn that, the plaintiff has filed this suit against the defendants for the relief of permanent injunction. The plaint averments may be read as part and parcel of this affidavit. The plaintiff is the absolute owner and in possession of the plaint schedule property. The plaint schedule property has been gifted to the plaintiff by his foster father and grandfather by virtue of registered gift deed dated 06.04.2006. Since the date of the gift deed, the plaintiff is in peaceful possession and enjoyment of the plaint schedule property as absolute owner and revenue records are transferred to the name of the plaintiff in respect of the plaint schedule property. The defendants have no manner of right, title or interest over the plaint schedule property. The defendants are trying to interfere over the peaceful possession of the plaintiff. In fact the defendants went to the extent of objecting before the Thahsildar not to effect RTC in favour of the plaintiff on the basis of aforesaid gift deed and the Thasildar has given endorsement that one Rajanna has given objection, hence, mutation cannot be effected in the name of the plaintiff. The said endorsement was questioned before Assistant Commissioner, Doddaballapura Sub division in Case

No.RA(N)252/2019. The court of Assistant Commissioner by its order dated 16.09.2020 allowed the said appeal and directed the Thasildar to effect the mutation in the name of the plaintiff. Accordingly, vide No.T.5/2020-21 mutation was transferred. The defendant No.1 and 2 with dishonest intention to cause trouble to the plaintiff, they have filed false suit in O.S.No.321/2022 before Hon'ble Senior Civil Judge Court, Nelamangala without there being any manner of right, title or interest over the plaint schedule property. No order has been granted in favour of the defendant in the said suit. Despite of the same, the defendants are trying to interfere with the possession of the plaintiff. On 01.09.2022, the defendant No.1 obstructed to the plaintiff to cultivate the plaint schedule land and insisted the plaintiff to divide the same equally and try to pick quarrel and again on 09.10.2022 also tried to interfere the possession of the plaintiff. The plaintiff has approached the police, but the police have informed to approach the civil court. The plaintiff has made out prima facie and balance of convenience lies in his favour. If the application is not allowed plaintiff will be put to irreparable loss and injury. If the application is allowed no injury caused to the other side. Hence on all these grounds prayed to allow the application.

3. On the other hand, after service of summons the defendants have filed written statement along with memo praying to treat the written statement averments as objection to this application. Wherein the defendants have denied the entire case of plaintiff as false and frivolous. It is further submitted that the plaintiff was under the care of his parents for all his basic needs. The plaintiff father Channakrishnaiah is alive and his mother stated to be died on which date is not disclosed is itself sufficient to state that the plaintiff has not approached this court with clean hands. The late Tirumalegowda is father of defendant No.1 and husband of defendant No.2 is correct. The defendant No.2 is the legal wedded wife of late Tirumalegowda. There is pending Original suit No.12/2012 is for partition between the sisters of the mother of the plaintiff. The late Tirumalegowda has no right to gift the properties to the plaintiff, because the properties are ancestral properties of said Tirumalegowda. Moreover during the pendency of OS No.12/2012 said registered gift deed dated 06.04.2006 executed. Hence gift deed has no value in the eye of law. The said gift deed is challenged by these defendants in OS No.321/2022 before the Hon'ble Senior civil judge at Nelamangala and prayed to declared the gift deed as null and void. The plaintiff has suppressed the fact

that in OS No.12/2012 an order of temporary injunction against the plaintiff is in continuous state. The Assistant Commissioner of Doddaballapura Court in RA(N) 252/2019 it was ordered to mutate the name of the plaintiff in the revenue records based on the gift deed has no value, because of the reasons that the revenue court has no jurisdiction to decide the right or share of the properties to the coparceners other than the civil court jurisdiction. The defendants are in possession over the plaint schedule property. Thus the suit filed by the plaintiff is not maintainable. Hence, on all these grounds prayed to dismiss the application.

4. Heard the arguments of both the parties. Perused the materials available on record and written arguments filed by the parties.

5. The following points would arise for consideration of this court:

1. Whether the plaintiff has made out prima-facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff suffers irreparable loss and injury, if temporary injunction is not granted?
4. What order ?

6. Findings of this court on 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:

REASONS

7. **Point No.1:** The plaintiff has filed this suit for the relief of permanent injunction against the defendants with respect of the plaint schedule property. Through the instant application the plaintiff has sought for temporary injunction by restraining the defendants and their agents or henchman or any other person claiming under them from interfering with the peaceful possession and enjoyment of the plaintiff over the Application/plaint schedule property.

8. I have carefully gone through the entire pleadings as well as documents and also arguments canvassed by the both parties and written arguments. In order to consider the application under Order XXXIX Rule 1 & 2, the Court should satisfy three ingredients namely, prima-facie case, balance of convenience and irreparable injury to the plaintiff if injunction is not granted. The existence of a prima facie goes in the matter of granting

injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further question of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other consideration governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit leap-frogging by the plaintiff directly to an injunction without crossing the other hurdles in between. Even granting that the plaintiff has an invincible prima facie case, he will not be entitled *ex debito justitiae*, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiff might have an unbeatable prima facie case. Keeping these principles I would like to discuss the facts of the present case on hand.

9. The plaintiff in order to succeed in this application has to prove prima facie case in his favour and balance of convenience which has to be in favour of the plaintiff and also he is called upon to prove the irreparable loss and injury, which would be caused to him if this application is rejected. With this basic principles in mind, now let me analyze the factual matrix on the basis of materials placed on record.

10. In order to grant a relief of temporary injunction the plaintiff is bestowed with the burden to show the prima facie case which lies in his favour and balance of convenience and also the irreparable loss caused to the plaintiff on account of a result of the application. It is the specific case of the plaintiff that the foster father and grand father has gifted the plaint schedule property in favour of plaintiff by virtue of gift deed dated 06.04.2006. Accordingly plaintiff is absolute owner in possession of schedule property. The defendants have no manner of right, title and interest over the schedule property. Despite of the same the defendants are interfering with the possession of plaintiff over the schedule property. In support of the case of the plaintiff the plaintiff has furnished copies of documents ie., genealogical tree, death certificates of Tirumalegowda and

Siddabyamma, gift deed dated 06.04.2006, Original mutation dated 21.10.2021, RTC extracts in Sy.No.22/1A1 and Sy.No.22/1B for the year 2022-23, Assistant Commissioner order dated 16.09.2020, and plaint in OS No.321/2022.

11. On the other hand the defendants have denied the case of the plaintiff and took contention that Thirumalegowda has no absolute right to gifted the schedule property in favour of the plaintiff as the plaint schedule properties are ancestral properties. In support of case of defendants the defendants furnished copies of documents, i.e. mutation register extract, order sheet, plaint and order passed on IA No.2 in OS No.12/2012.

12. I have perused the pleadings, IA, annexed affidavit and objection. It is specific case of the plaintiff that the plaint schedule property has been acquired by the plaintiff by virtue of gift deed dated 06.04.2006. Accordingly plaintiff is in possession and enjoyment of plaint schedule property. The defendants have no manner of right title and interest over the schedule property. Despite of the same the defendants are trying to interfere to the possession of the plaintiff over the schedule property. On the other hand the defendants have denied the title of the plaintiff over the schedule property by taking

contention that the doner of the Gift deed dated 06.04.2006 by name Thirumalegowda has no absolute right to gift the schedule property in favor of the plaintiff. Further the plaintiff has taken contention that during the life time of Siddabyamma i.e., first wife of Thirumalegowda, Thirumalegowda got married second defendant Lakshamma and defendant No.2 and her children were residing at Kenchanahalli Village, but not in the village of Thirumalegowda and now the defendant No.1 is residing in Geddalahalli. Therefore children of defendant No.2 and Thirumalegowda are illegitimate children and they cannot be recognized as legal heirs of deceased Thirumalegowda. Therefore the defendants have no right over the schedule property. On perusal of death certificate of Thirumalegowda depicts that Thirumalegowda died on 19.02.2016. A perusal of gift deed dated 06.04.2006 executed by Thirumalegowda in favour of plaintiff in respect of schedule property depicts that Thirumalegowda has gifted schedule property in favour of plaintiff. As per the RTC extract Khatha of schedule property stands in the name of the plaintiff. Further on perusal of plaint in OS No.321/2022 discloses that the defendants have filed suit for declaration challenging the gift deed dated 06.04.2006 in respect of schedule property against the plaintiff herein.

13. Further, at this stage a perusal of MR No.9/88-89 depicts that said Thirumalegowda has got schedule property by virtue of Jubane partition held among his brothers. On perusal of plaint in OS No.12/2012 depicts that the children of Thirumalegowda have filed suit for partition against the Thirumalegowda and the other children of Thirumalegowda along with plaintiff for the relief of partition in respect of schedule property herein and other properties. Therefore on perusal of pleading and documents available on record at this stage it appears that the defendant No.2 is the second wife of deceased Thirumaligowda and defendant No.1 is the son of Thirumalegowda and defendant No.2. The genealogical tree produced by the plaintiff does not include the defendants. Admittedly OS No.12/2012 filed by the children of Thirumalegowda for the relief of partition and separate possession is pending for consideration and another suit in OS No.321/2022 filed by the defendants against the plaintiff for the relief of declaration in respect of alleged gift deed is pending for consideration. The main contention of the defendants that schedule property is the ancestral property of Thirumalegowda and he has no absolute right over the schedule property to gift the same in favour of the plaintiff. On perusal of Mutation Register extract at this stage it appears

that the Thirumalegowda had acquired schedule property by virtue of partition held among his brothers. Further on perusal of plaint in OS 12/2012, item No.1 and 2 of schedule of said plaint are the present schedule properties and in said suit temporary injunction order has been granted by restraining the defendants from alienating schedule properties till disposal of the said suit. Since the partition suit is pending between the plaintiff, defendants and other children of Thirumalegowda without full fledged trial this court cannot come to any conclusion. Though the registered gift deed dated 06.04.2006 executed in favour of plaintiff in respect of plaint schedule property, in order to ascertain the right of the donor of the said gift deed full fledged trial is required. In the absence of the same this court cannot come to any conclusion. Under such circumstances this court is of the considered opinion that the plaintiff has failed to made out prima facie case. With these observation this court has answered Point No.1 in the Negative.

14. **Points No.2 and 3:** These points are taken up together for common discussion to avoid repetition of facts. As the plaintiff has failed to establish a prima-facie case in his favour these two points do not survive for consideration as Prima facie

case is harbinger to other considerations. In this regard it would be relevant to refer to the decision rendered by Hon'ble High Court Of Karnataka In *Gowrishankar Swamigalu V/s. Siddhaganag Mutt & Ors* reported in ILR 1989 KAR 1701, wherein the Hon'ble High Court of Karnataka held as follows:-

"...The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself..."

Accordingly, with these observations point No. 2 and 3 are answered in the 'negative'.

15. **POINT NO.4**: In view of the reasons and discussion made on points No.1 to 3, this court proceed to pass the following;

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 of Civil Procedure Code is hereby dismissed.

In view of the facts and circumstances of the case, no order as to costs.

(Dictated to the Stenographer directly through computer, transcribed by her, the transcript corrected and pronounced by me in the open court on this the 11th day of March, 2024)

Sd/-
Prl. Civil Judge and JMFC.,
Nelamangala.