

KACD420000382023



**IN THE COURT OF THE PRL. CIVIL JUDGE
AT HOLALKERE**

Present: Sri.UMESHA, M.P., B.A.L., LL,B.
PRL.CIVIL JUDGE & JMFC,
HOLALKERE

DATED: ON THIS THE 03rd DAY OF JULY – 2023

ORIGINAL SUIT No. 15 /2023

PLAINTIFF : **Smt. SHWETHA.H.R.** W/o Sathshachar. S.U.,
Aged about 32 years, Occ:Agriculturist,
R/o Shivapura village, Kasaba Hobli,
Holalkere Taluk.
(BY PLEADER SRI.M.B.A)

-V/s-

DEFENDANT : **MANJAPPA. S.** S/o Shivalingappa,
Aged about 50 years, Occ:Agriculturist,
R/o Shivapura Village,
Kasaba Hobli, Holalkere Taluk.
(BY PLEADER SRI.GM)

PARTIES TO I. A. NO. I

APPLICANT/PLAINTIFF: **Smt. SHWETHA.H.R.** W/o Sathshachar.S.U.,
Aged about 32 years, Occ:Agriculturist,
R/o Shivapura village, Kasaba Hobli,
Holalkere Taluk.
(BY PLEADER SRI.M.B.A)

-V/s-

OPPONENT / DEFENDANT: **MANJAPPA. S.** S/o Shivalingappa,
Aged about 50 years, Occ:Agriculturist,
R/o Shivapura Village,
Kasaba Hobli, Holalkere Taluk.
(BY PLEADER SRI.GM FOR DEFENDANT)

ORDERS ON I. A. NO. I

The Applicant / plaintiff has filed IA No.1 under order XXXIX Rule 1
and 2 of Civil Procedure Code praying to an interim order of temporary

injunction in favour of the plaintiff and against the defendant for not to interfere and disturbance of the suit schedule properties by the defendant and his men, agent, servant etc., in any manner, till disposal of the suit in the ends of justice.

2. According to plaintiff, she is the right full owner of suit schedule properties ie., land bearing Sy.No.19/1b measuring 14 guntas, Sy.No.19/4 measuring 0-36 guntas and in total 01acre 10 guntas, situated at Shivapura Village, Kasaba Hobli, Holalkete Taluk. It is further stated that, the suit properties are the self acquired properties of plaintiff. It is further stated that, originally land bearing Sy.No.19 measuring 04 acres 34 guntas, including 01 guntas of karab, situated at Shivapura Village Kasaba Hobli, Holalkere Taluk and it's owner by name Chandrappa S/o Late Eshwarappa of Shivapura village and he acquired the same by family partition through Registered partition deed bearing S.R. No.692/96-97 dated:10.09.1996. It is further stated that, after the said registered partition Deed, the khatha was mutated in his name vide M.R.No.4/97-98 and he was enjoyed the same till his death. It is further stated that, after the death of Chandrappa, the khatha was mutated in the name of his wife by name Smt.Neelamma and sons by name Ajjappa and Shadakshari jointly vide M.R.No.H11/14-15 and they were enjoyed the same along with family members by paying land revenue to the Government till 11.12.2017. It is further stated that, the said Smt.Neelamma and her sons by name Ajjappa and Shadakshari were partitioned their family properties through Register Partition Deed bearing S.R. No.3389/2017-18. It is further

stated that, in the said Registered Partition Deed, the land bearing Sy.No.19/1A measuring 01acre 10 guntas, and Sy.No.19/1B measuring 14 guntas, were allotted to the share of Shadakshari S/o Late. S.E.Chandrappa of Shivapura village, and khatha was mutated in the name of Shadakshari vide M.R. No.11/17-18 and he was enjoyed the same along with family members by paying land revenue to the Government till 01.10.2020. It is further stated that, the said Shadakshari and his wife by name Smt.Jayasheela.S are jointly sold an extent of 36 guntas in th land bearing Sy.No.19/1A and an extent of 14 guntas in Sy No.19/1B to one Sri. P.Umapathi @ P.Umapaki through Registered Sale Deed bearing S.R. No.2454/20-21dated: 01.10.2020 with 11E-sketch. It is further stated that, on the basis of Registered Sale deed, the khatha was mutated into his name vide M.R. No.12/2020-21 and he was enjoyed the same as a self acquired property till 04.12.2020. It is further stated that, the said Pumapathi @ P. Umapaki had gifted the above said property to one Smt.Shwetha.H.R ie the plaintiff through a Registered Gift Deed bearing S.R.No.3450/20-21 dated: 04.12.2020. It is further stated that, on the basis of the said Registered Gift Deed, the khath of the land bearing Sy.No.19/1A, measuring 0-36 guntas, and Sy. No.19/1B, measuring 0-14 guntas, was mutated in her name vide M.R.No.H15/2020-21 and she has got measured the same by the Survey department on 09.08.2021 and she is enjoying the same as a self acquired property till today. It is further stated that, the defendant is not concern any land of plaintiff and he is not the neighbors and he simply give trouble to the plaintiff. It is further statd that, the plaintiff is developed her

property as a started fixing facing at the time defendant is give trouble to the plaintiff and her land. It is further stated that, the defendant is stronger and political influenced person in their village. It is further stated that, the defendant is not any other properties from near by the land of the plaintiff. It is further stated that, the suit schedule properties are self acquired properties of the plaintiff. It is further stated that, the plaintiff has right in the suit schedule properties. It is further stated that, the defendant is now seriously trying to obstruct the suit schedule properties in order to harass the plaintiff and to cause hardship and irreparable injury will be cause to the plaintiff and no cause of the defendant. It is further stated that, the plaintiff has got right over the suit schedule properties as a self acquired properties. It is further stated that, the defendant is also strong person and he interfere and disturbance with the possession of the plaintiff. It is further stated that, the defendant is created documents of his properties and the illegal act pertaining to the suit schedule properties and any amount of advice by the elder of the village went in vain. The acts of the defendant highly illegal, high handed prevention and oppose to the natural justice which can not be prevented unless with the help of the Hon'ble court. Hence, the suit for Declaration and permanent injunction. Hence, prayed to allow this application.

3. Per Contra, the defendant has contended that, the plaintiff has filed the above suit against the defendant for the relief of declaration and permanent injunction with respect to the suit properties. It is further contended that, one Shivappa was the prepositor and the said Shivappa had totally six sons by

name Bommappa, Mahalingappa, Shivalingappa, Rangappa, Mahadevappa and Nanjappa. It is further contended that, after the death of Shivappa, his sons had divided the properties by way of family settlement along with suit schedule properties long back. As per the said family settlement, the suit schedule properties was allotted to all the six sons apart from other properties. It is further contended that, as per the said family settlement, the suit schedule properties were divided among the six sons of late.Shivappa and accordingly all the six sons of late.Shivappa took their respective shares and enjoyed the property exclusively and peacefully. In spite of the said family settlement and division of the suit schedule properties among the six sons of late Shivappa, the revenue entries pertaining to the suit schedule properties which came under Re.Sy.No.19/1 measuring 04 acre 03 guntas (1 gunta Kharab), were mutated in the name of Shivappa's grandson and son of 1st son Bommppa by name Eshwarppa S/o Bommappa, under IHC and accordingly the RTC was generated in the name of late Shivappa continued to enjoy their respective shares in the said Re.Sy.No.19/1 of Shivapura village. It is further contended that, in spite of having the knowledge about the joint status of the land in Re.Sy.No.19 and also the revenue entry standing in the name of Eshwarappa which was mutated under IHC, after the death of the said Eshwarappa, his son by name Chandrappa by taking advantage of the revenue entries standing in the name of Eshwarappa got the revenue entries mutated in his name and accordingly, the RTC was generated in the name of the said Chandrappa S/o Eshwarappa. It is further contended that, after the death of Chandrapa S/o

Eshwarappa his wife and children by name Smt.Neelamma, Ajjappa and Panchakshari partitioned the said properties through a registered partition deed dated:11.12.2017, the said alleged partitioned was affected between the wife and children of late Chandrappa without the knowledge of the sons and grandsons of late Shivappa. It is further contended that, the said Registered partition deed is a sham document and does not binds the right and share of the defendant. It is further contended that, later on the said son of late Chandrappa by name Panchakshari and his sife Jayasheels have jointly sold, the lands measuring 36 guntas in Re.Sy.No.19/1A and 14 guntas in Sy. No.19/1B to one P.Umapathi @ P.Umapaki through registered sale deed dated: 01.10.2020. It is further contended that, the said registered Sale Deed is also a sham document and does not binds the right and share of the defendant. It is further contended that, later on the said P.Umapathi @ P.Umapaki had executed a Registered Gift Deed in favour of the plaintiff through a registered Gift Deed dated:04.12.2020. It is further contended that, the said Registered Gift Deed is also a sham document and does not binds the right and share of the defendant. It is further contended that, in spite of all these sham transactions that has taken place in between the sons of late.Shivappa and his sons and grandsons has not affected the actual possession of the other sons of late.Shivappa and their sons and still the grandsons are in peaceful possession and enjoyment of their respective shares which was allotted to their fathers through family settlement. It is further contended that, the father of the defendant by name Shivalingappa had purchased the land measuring 20

guntas in Re.Sy.No.19/1 through a registered Sale Deed dated:20.07.1950 from the sons of late.Mahalingappa who is the 2nd son of the prepositor late Shivappa. This is the testimony to the fact that there was a family arrangement long back in the family of late.Shivappa and his sons had taken their respective shares and enjoyed independently and peacefully and the sons of the said late.Mahalingappa have sold the said share of late.Mahalingappa to the father of the defendant. It is further contended that, even though the father of the defendant by name Shivalingappa had purchased an extent of 20 guntas with specific boundaries of land from the sons of late.Mahalingappa through a registered document, due to the mistake committed by the revenue authorities the name of the said Shivalingappa was not mutated. It is further contended that, on 22.04.1959 the third son of late Shivappa by name Rangappa and his five sons had partitioned the family properties and in the said partition the land measuring 20 guntas with specific boundaries in Re. Sy.No.19/1 had fallen to the share of the defendant's father by name Shivalingappa. In spite of the said Registered partition, due to the mistake committed by the revenue authorities the said partition was not mutated in the revenue records in the name of Shivalingappa, but nevertheless, the said Shivalingappa was put into possession and the said Shivalingapp enjoyed the said 20 guntas with specific boundaries of land along with this family members. It is further contended that, such being the case and after the death of Shivalingappa, his son who is this defendant is in peaceful possession and enjoyment of the aforesaid 20 guntas of land which specific boundary in Re.Sy.No.19/1 of Shivapura village.

It is further contended that, the plaintiff by holding a fraudulent registered Gift Deed in her favour and she is claiming the said 20 guntas of land in Re.Sy. No.19/1 which is in exclusive possession of the defendant which is highly mischievous and high handed. It is further contended that, the plaintiff is never in possession of the aforesaid land at any point of time which belongs to the defendant. It is further contended that, the property acquired by the plaintiff is a fraudulent one and she does not derive any right and ownership over the said property. Such being the case, the plaintiff by taking advantage of the fraudulent Registered Gift Deed executed by one Umpathi @ Umapaki has filed the above suit in order to cause hardship and inconvenience to this defendant. Hence, he prayed to dismiss the suit of the plaintiff with exemplary cost in the interest of justice.

4. I have heard the arguments of learned counsel for the plaintiff and defendant on IA No.1. Perused the documents on record.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arise for my consideration.

- 1. Whether the plaintiff has established prima-facie case to allow the IA No.1?**
- 2. Whether the balance of convenience lies in favour of plaintiff to allow the IA No.1?**
- 3. Whether irreparable loss or hardship will be caused to the plaintiff if injunction is not granted?**
- 4. What order?**

6. My answer for the above points are as under because of my below-discussed reasons:

Point No.1 - In the NEGATIVE

Point No.2 - In the NEGATIVE

Point No.3 - In the NEGATIVE

Point No.4 - As per order for the following:-

REASONS

POINT NO.1:

7. The plaintiff has filed the suit against the defendant seeking relief of declaration & permanent injunction pertaining to the suit properties. The plaintiff has filed this present application seeking temporary injunction as against the defendant.

8. The Applicant / plaintiff has filed IA No.1 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to an interim order of temporary injunction in favour of the plaintiff and against the defendant for not to interfere and disturbance of the suit schedule properties by the defendant and his men, agent, servant etc., in any manner, till disposal of the suit in the ends of justice.

9. As per the provisions of Order 39 Rule 1 of CPC, where in any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such

act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

10. Admittedly, granting or refusing injunction is a discretionary in nature. It is well settled position of law that the following preposition are to be established in order to invoke the jurisdiction of the Court to get an order of injunction under the provisions of Order 39 Rule 1 and 2 of CPC. (1) the plaintiff has to establish the prima-facie case, (2) the balance of inconvenience is in favour of the plaintiff and (3) that the plaintiff will suffer irreparable loss and injury if injunction is refused.

11. Therefore the ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come with clean hands and place all the materials before the Court so that the Court will be satisfied about the prima-facie case in favour of the party seeking order. It is no part of Court's duty or function at this stage of litigation to try to resolve difficult questions of facts and law which require elaborate evaluation of the evidence to be recorded at the trial. Now keeping the above said provisions of law and also principles in mind, let us consider as to whether the plaintiff could able to establish prima-facie case for grant of temporary injunction.

12. It is specific case of the plaintiff that, she is the right full owner of suit schedule properties ie., land bearing Sy.No.19/1b measuring 14 guntas, Sy.No.19/4 measuring 0-36 guntas and in total 01acre 10 guntas, situated at Shivapura Village, Kasaba Hobli, Holalkete Taluk. It is further stated that, the suit properties are the self acquired properties of plaintiff. It is further stated that, originally land bearing Sy.No.19 measuring 04 acres 34 guntas, including 01 guntas of karab, situated at Shivapura Village Kasaba Hobli, Holalkere Taluk and it's owner by name Chandrappa S/o Late Eshwarappa of Shivapura village and he acquired the same by family partition through Registered partition deed bearing S.R. No.692/96-97 dated:10.09.1996. It is further stated that, after the said registered partition Deed, the khatha was mutated in his name vide M.R.No.4/97-98 and he was enjoyed the same till his death. It is further stated that, after the death of Chandrappa, the khatha was mutated in the name of his wife by name Smt.Neelamma and sons by name Ajjappa and Shadakshari jointly vide M.R.No.H11/14-15 and they were enjoyed the same along with family members by paying land revenue to the Government till 11.12.2017. It is further stated that, the said Smt.Neelamma and her sons by name Ajjappa and Shadakshari were partitioned their family properties through Register Partition Deed bearing S.R. No.3389/2017-18. It is further stated that, in the said Registered Partition Deed, the land bearing Sy.No.19/1A measuring 01acre 10 guntas, and Sy.No.19/1B measuring 14 guntas, were allotted to the share of Shadakshari S/o Late. S.E.Chandrappa of Shivapura village, and khatha was mutated in the name of Shadakshari vide

M.R. No.11/17-18 and he was enjoyed the same along with family members by paying land revenue to the Government till 01.10.2020. It is further stated that, the said Shadakshari and his wife by name Smt.Jayasheela.S are jointly sold an extent of 36 guntas in th land bearing Sy.No.19/1A and an extent of 14 guntas in Sy No.19/1B to one Sri. P.Umapathi @ P.Umapaki through Registered Sale Deed bearing S.R. No.2454/20-21dated: 01.10.2020 with 11E-sketch. It is further stated that, on the basis of Registered Sale deed, the khatha was mutated into his name vide M.R. No.12/2020-21 and he was enjoyed the same as a self acquired property till 04.12.2020. It is further stated that, the said Pumapathi @ P. Umapaki had gifted the above said property to one Smt.Shwetha.H.R ie the plaintiff through a Registered Gift Deed bearing S.R.No.3450/20-21 dated: 04.12.2020. It is further stated that, on the basis of the said Registered Gift Deed, the khath of the land bearing Sy.No.19/1A, measuring 0-36 guntas, and Sy. No.19/1B, measuring 0-14 guntas, was mutated in her name vide M.R.No.H15/2020-21 and she has got measured the same by the Survey department on 09.08.2021 and she is enjoying the same as a self acquired property till today. It is further stated that, the defendant is not concern any land of plaintiff and he is not the neighbors and he simply give trouble to the plaintiff. It is further stated that, the plaintiff is developed her property as a started fixing facing at the time defendant is give trouble to the plaintiff and her land. It is further stated that, the defendant is stronger and political influenced person in their village. It is further stated that, the defendant is not any other properties from near by the land of the plaintiff. It

is further stated that, the suit schedule properties are self acquired properties of the plaintiff. It is further stated that, the plaintiff has right in the suit schedule properties. It is further stated that, the defendant is now seriously trying to obstruct the suit schedule properties in order to harass the plaintiff and to cause hardship and irreparable injury will be cause to the plaintiff and no cause of the defendant. It is further stated that, the plaintiff has got right over the suit schedule properties as a self acquired properties. It is further stated that, the defendant is also strong person and he interfere and disturbance with the possession of the plaintiff. It is further stated that, the defendant is created documents of his properties and the illegal act pertaining to the suit schedule properties and any amount of advice by the elder of the village went in vain. The acts of the defendant highly illegal, high handed prevention and oppose to the natural justice which can not be prevented unless with the help of the Hon'ble court. Hence, the suit for Declaration and permanent injunction. Hence, prayed to allow this application. It is further stated that, the illegal act of the defendant has to be restrained by the aid of this Hon'ble court. Hence, the plaintiff having no other alternative way, she has approached this court of law seeking for the relief of declaration and permanent injunction with respect to suit properties. It is further stated that, she has got prima-facie case and balance of convenience lies in her favour. Hence, prayed to allow this application.

13. In the supporting affidavit, the plaintiff sworn that, she is the right full owner of suit schedule properties ie., land bearing Sy.No.19/1b measuring

14 guntas, Sy.No.19/4 measuring 0-36 guntas and in total 01acre 10 guntas, situated at Shivapura Village, Kasaba Hobli, Holalkete Taluk. It is further stated that, the suit properties are the self acquired properties of plaintiff. It is further stated that, originally land bearing Sy.No.19 measuring 04 acres 34 guntas, including 01 guntas of karab, situated at Shivapura Village Kasaba Hobli, Holalkere Taluk and it's owner by name Chanddrappa S/o Late Eshwarappa of Shivapura village and he acquired the same by family partition through Registered partition deed bearing S.R. No.692/96-97 dated:10.09.1996. It is further stated that, after the said registered partition Deed, the khatha was mutated in his name vide M.R.No.4/97-98 and he was enjoyed the same till his death. It is further stated that, after the death of Chandrappa, the khatha was mutated in the name of his wife by name Smt.Neelamma and sons by name Ajjappa and Shadakshari jointly vide M.R.No.H11/14-15 and they were enjoyed the same along with family members by paying land revenue to the Government till 11.12.2017. It is further stated that, the said Smt.Neelamma and her sons by name Ajjappa and Shadakshari were partitioned their family properties through Register Partition Deed bearing S.R. No.3389/2017-18. It is further stated that, in the said Registered Partition Deed, the land bearing Sy.No.19/1A measuring 01acre 10 guntas, and Sy.No.19/1B measuring 14 guntas, were allotted to the share of Shadakshari S/o Late. S.E.Chandrappa of Shivapura village, and khatha was mutated in the name of Shadakshari vide M.R. No.11/17-18 and he was enjoyed the same along with family members by paying land revenue to the

Government till 01.10.2020. It is further stated that, the said Shadakshari and his wife by name Smt.Jayasheela.S are jointly sold an extent of 36 guntas in the land bearing Sy.No.19/1A and an extent of 14 guntas in Sy No.19/1B to one Sri. P.Umapathi @ P.Umapaki through Registered Sale Deed bearing S.R. No.2454/20-21 dated: 01.10.2020 with 11E-sketch. It is further stated that, on the basis of Registered Sale deed, the khatha was mutated into his name vide M.R. No.12/2020-21 and he was enjoyed the same as a self acquired property till 04.12.2020. It is further stated that, the said P. Umapathi @ P. Umapaki had gifted the above said property to one Smt.Shwetha.H.R ie the plaintiff through a Registered Gift Deed bearing S.R.No.3450/20-21 dated: 04.12.2020. It is further stated that, on the basis of the said Registered Gift Deed, the khatha of the land bearing Sy.No.19/1A, measuring 0-36 guntas, and Sy. No.19/1B, measuring 0-14 guntas, was mutated in her name vide M.R.No.H15/2020-21 and she has got measured the same by the Survey department on 09.08.2021 and she is enjoying the same as a self acquired property till today. It is further stated that, the defendant is not concerned with any land of plaintiff and he is not the neighbors and he simply gives trouble to the plaintiff. It is further stated that, the plaintiff has developed her property as a started fixing facing at the time defendant is giving trouble to the plaintiff and her land. It is further stated that, the defendant is stronger and politically influenced person in their village. It is further stated that, the defendant is not aware of any other properties near by the land of the plaintiff. It is further stated that, the suit schedule properties are self acquired properties of the plaintiff. It

is further stated that, the plaintiff has right in the suit schedule properties. It is further stated that, the defendant is now seriously trying to obstruct the suit schedule properties in order to harass the plaintiff and to cause hardship and irreparable injury will be cause to the plaintiff and no cause of the defendant. It is further stated that, the plaintiff has got right over the suit schedule properties as a self acquired properties. It is further stated that, the defendant is also strong person and he interfere and disturbance with the possession of the plaintiff. It is further stated that, the defendant is created documents of his properties and the illegal act pertaining to the suit schedule properties and any amount of advice by the elder of the village went in vain. The acts of the defendant highly illegal, high handed prevention and oppose to the natural justice which can not be prevented unless with the help of the Hon'ble court. Hence, the suit for Declaration and permanent injunction. Hence, prayed to allow this application. It is further stated that, the illegal act of the defendant has to be restrained by the aid of this Hon'ble court. Hence, the plaintiff having no other alternative way, she has approached this court of law seeking for the relief of declaration and permanent injunction with respect to suit properties. It is further stated that, she has got prima-facie case and balance of convenience lies in her favour. Hence, prayed to allow this application.

14. The plaintiff has placed the Copy of RTC bearing Sy.No. 19/4 for the year 2022-23, RTC bearing Sy No.19/1b for the year 2022-23, RTC bearing Sy No.19/1 for the year 2015-2016, RTC bearing Sy No. 19/1 for the year 2001-2002, Mutation Register No.H15 dated: 04.12.2020, Mutation Register

No.T65 dated: 24.11.2016, Receipt Patta, Tax paid receipt, Gift Deed, Encumbrance Certificate, Notarized copy of Sale Deed, Certified copy of Partition Deed, police Endorsement dated:20.04.2022, Hadubastu sketch.

15. Per Contra, the defendant has contended that, the plaintiff has filed the above suit against the defendant for the relief of declaration and permanent injunction with respect to the suit properties. It is further contended that, one Shivappa was the prepositor and the said Shivappa had totally six sons by name Bommappa, Mahalingappa, Shivalingappa, Rangappa, Mahadevappa and Nanjappa. It is further contended that, after the death of Shivappa, his sons had divided the properties by way of family settlement along with suit schedule properties long back. As per the said family settlement, the suit schedule properties was allotted to all the six sons apart from other properties. It is further contended that, as per the said family settlement, the suit schedule properties were divided among the six sons of late.Shivappa and accordingly all the six sons of late.Shivappa took their respective shares and enjoyed the property exclusively and peacefully. In spite of the said family settlement and division of the suit schedule properties among the six sons of late Shivappa, the revenue entries pertaining to the suit schedule properties which came under Re.Sy.No.19/1 measuring 04 acre 03 guntas (1 gunta Kharab), were mutated in the name of Shivappa's grandson and son of 1st son Bommppa by name Eshwarppa S/o Bommappa, under IHC and accordingly the RTC was generated in the name of late Shivappa continued to enjoy their respective shares in the said Re.Sy.No.19/1 of

Shivapura village. It is further contended that, in spite of having the knowledge about the joint status of the land in Re.Sy.No.19 and also the revenue entry standing in the name of Eshwarappa which was mutated under IHC, after the death of the said Eshwarappa, his son by name Chandrappa by taking advantage of the revenue entries standing in the name of Eshwarappa got the revenue entries mutated in his name and accordingly, the RTC was generated in the name of the said Chandrappa S/o Eshwarappa. It is further contended that, after the death of Chandrappa S/o Eshwarappa his wife and children by name Smt.Neelamma, Ajjappa and Panchakshari partitioned the said properties through a registered partition deed dated:11.12.2017, the said alleged partitioned was affected between the wife and children of late Chandrappa without the knowledge of the sons and grandsons of late Shivappa. It is further contended that, the said Registered partition deed is a sham document and does not binds the right and share of the defendant. It is further contended that, later on the said son of late Chandrappa by name Panchakshari and his sife Jayasheels have jointly sold, the lands measuring 36 guntas in Re.Sy.No.19/1A and 14 guntas in Sy. No.19/1B to one P.Umapathi @ P.Umapaki through registered sale deed dated: 01.10.2020. It is further contended that, the said registered Sale Deed is also a sham document and does not binds the right and share of the defendant. It is further contended that, later on the said P.Umapathi @ P.Umapaki had executed a Registered Gift Deed in favour of the plaintiff through a registered Gift Deed dated:04.12.2020. It is further contended that, the said Registered Gift Deed is

also a sham document and does not binds the right and share of the defendant. It is further contended that, in spite of all these sham transactions that has taken place in between the sons of late.Shivappa and his sons and grandsons has not affected the actual possession of the other sons of late.Shivappa and their sons and still the grandsons are in peaceful possession and enjoyment of their respective shares which was allotted to their fathers through family settlement. It is further contended that, the father of the defendant by name Shivalingappa had purchased the land measuring 20 guntas in Re.Sy.No.19/1 through a registered Sale Deed dated:20.07.1950 from the sons of late.Mahalingappa who is the 2nd son of the prepositor late Shivappa. This is the testimony to the fact that there was a family arrangement long back in the family of late.Shivappa and his sons had taken their respective shares and enjoyed independently and peacefully and the sons of the said late.Mahalingappa have sold the said share of late.Mahalingappa to the father of the defendant. It is further contended that, even though the father of the defendant by name Shivalingappa had purchased an extent of 20 guntas with specific boundaries of land from the sons of late.Mahalingappa through a registered document, due to the mistake committed by the revenue authorities the name of the said Shivalingappa was not mutated. It is further contended that, on 22.04.1959 the third son of late Shivappa by name Rangappa and his five sons had partitioned the family properties and in the said partition the land measuring 20 guntas with specific boundaries in Re. Sy.No.19/1 had fallen to the share of the defendant's father by name Shivalingappa. In spite of

the said Registered partition, due to the mistake committed by the revenue authorities the said partition was not mutated in the revenue records in the name of Shivalingappa, but nevertheless, the said Shivalingappa was put into possession and the said Shivalingapp enjoyed the said 20 guntas with specific boundaries of land along with this family members. It is further contended that, such being the case and after the death of Shivalingappa, his son who is this defendant is in peaceful possession and enjoyment of the aforesaid 20 guntas of land which specific boundary in Re.Sy.No.19/1 of Shivapura village. It is further contended that, the plaintiff by holding a fraudulent registered Gift Deed in her favour and she is claiming the said 20 guntas of land in Re.Sy. No.19/1 which is in exclusive possession of the defendant which is highly mischievous and high handed. It is further contended that, the plaintiff is never in possession of the aforesaid land at any point of time which belongs to the defendant. It is further contended that, the property acquired by the plaintiff is a fraudulent one and she does not derive any right and ownership over the said property. Such being the case, the plaintiff by taking advantage of the fraudulent Registered Gift Deed executed by one Umpathi @ Umapaki has filed the above suit in order to cause hardship and inconvenience to this defendant. Hence, he prayed to dismiss the suit of the plaintiff with exemplary cost in the interest of justice. It is further contended that, there is no prima-facie case and balance of convenience do not lies in favour of the plaintiff. As against this, the defendant has got prima-facie case and balance of convenience in his favour. If the temporary injunction is granted, great

injustice and illegal injury will caused to the defendant. On all these grounds, they prayed to reject to IA No.1.

16. The defendants have placed the original sale deed dated:20.07.1950, copy of registered partition deed dated:20.04.1959, G-tree, RTC extracts with respect to suit properties, copy of Akar bandh with respect to suit properties, EC with respect to suit properties.

17. In this connection it is relevant to extract the provisions of Sec.41 of Specific Relief Act, 1963 – Injunction when refused:-

“An injunction cannot be granted:-

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not sub-ordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;

- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.
- (i) when the conduct of the plaintiff or his agent has been such as to dis-entitle him to be the assistance of the Court;
- (j) when the plaintiff has no personal interest in the matter.

18. It is to be noted that, the right of parties in suit property is to be decided after conclusion of trial. Further, the nature of the suit properties and acquisition of the suit properties is disputed by the defendant. Further, the possession of the suit properties is also disputed by the defendant. Therefore, it can be safely held that, the plaintiff has not made out prima-facie case and balance of convenience do not lies in her favour for grant of temporary injunction. Hence I answer point No.1 in the Negative.

POINTS NO.2 & 3:

19. These two points are taken up together for common discussion, for the sake of convenience, clarity and also to avoid repetition of facts. In considering the question of balance of convenience, the Court has to consider the comparative mischief or inconvenience of both the parties or otherwise it is necessary or proper to maintain the status quo until the disputes are finally decided. Further, in considering the question of irreparable loss and injury, the Court has to see that the plaintiff will sustain such injury which cannot

possibly and adequately be remedied by way of damage and the damage would be inadequate in case of success of plaintiff. Under these circumstance, the balance of convenience is do not lies in favour of the plaintiff and in favour of the defendant. Therefore for the reasons discussed above, this Court is of the considered view that the balance of convenience do not lies in favour of the plaintiff and irreparable loss and injury would not be caused to plaintiff if a temporary injunction is refused. Hence I answer points No.2 and 3 in the Negative.

POINT No.4:

20. In view of my findings on Points No.1 to 3, I proceed to pass the following order:-

ORDER

I.A.No.I filed by the plaintiff under order 39 Rule 1 and 2 R/w Sec.151 of CPC is hereby dismissed.

The cost of this application shall follow the result of the suit.

(Dictated to the Stenographer directly on Computer, typed by her, order corrected and signed by me, then pronounced by me in the Open Court on this the 03rd day of July - 2023)

(UMESHA M.P)
Prl. Civil Judge & JMFC
Holalkere

