



**IN THE COURT OF THE SENIOR CIVIL JUDGE  
AND J.M.F.C., TARIKERE**

Present :  
**SRI VAIDYA SHREEKANT,**  
*B.Sc, LL.B.*  
SENIOR CIVIL JUDGE & JMFC.,  
Tarikere.

**DATED : THE 7<sup>th</sup> DAY OF MARCH 2026**

**O.S.NO.8/2025**

**PLAINTIFF/S :**

Smt. Rekha B.K., D/o B.A.  
Krishnamurthy, W/o Ramesh  
K.S., aged about 33 years, R/o  
Kalidasa Nagara, Near  
Panduranga Temple, Kadur –  
577548, Chikkamagaluru  
District.

**(By Sri. Onkara.K.B.,  
Advocate)**

- Vs -

**DEFENDANT/S:**

1. Smt. Ashwini.S., W/o late  
Vijaya Kumar B.K., aged  
about 29 years,

2. Shankar Rao S/o not  
known, aged about 64 years,

3. Smt. Shakku Bai W/o  
Shankar Rao, aged about 58  
years,



4. Kiran Kumar.S., S/o  
Shankar Rao, aged about 34  
years,

All the defendants are residing  
at Yellammadevi Saree Centre  
Opp Salumaradamma Temple,  
B.H. Road, Tarikere – 577228,  
Chikkamagaluru District.

**(D-1 by Sri. K.R.Hemant  
Kumar and D-2 to 4 by Sri.  
P.Vinay Kumar, Advocates)**

**PARTIES TO I.A.NO.I**

**Applicant/s:** Smt. Rekha B.K.  
V/s

**Opponent/s:** Smt. Ashwini.S. and others

**ORDER ON IA-I**

The plaintiff has filed IA No.I under order XXXIX Rule 1 and 2 R/w Sec.151 of CPC praying this court to pass an order of temporary injunction restraining the defendants from alienating and creating any charge over the suit schedule properties till disposal of the suit.

2. In the annexed affidavit to the application, the plaintiff deposed that she is absolute owner of the suit schedule 'A' and 'B' properties having acquired the rights and title over the same through



registered gift deed dated 28.02.2024 registered before Sub-Registrar, Tarikere. The said gift deed has been executed by her father namely B.A. Krishnamurthy out of love and affection towards her. The suit schedule properties are self-acquired properties of her father being purchased by him through registered sale deeds bearing document No.TRK-1-00565/2006-07 and document bearing No.TRK 1-00562/2006-07 dated 03.06.2021.

3. It is further deposed that her father became absolute owner of the suit schedule properties by virtue of above referred sale deeds and since then he was in peaceful possession and enjoyment of the properties so purchased and was also paying taxes to the said properties. Sri B.A. Krishnamurthy had 3 children namely Vijaya kumar, B.K.Raghavendra and plaintiff herein. The elder son Vijaya Kumar is no more, the defendant No.1 is his wife. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants are the parents of the 1<sup>st</sup> defendant. The 4<sup>th</sup> defendant is the elder brother of the 1<sup>st</sup> defendant.

4. After death of her father, the husband of 1<sup>st</sup> defendant and all the defendants started to reside in the suit schedule properties unauthorizedly. It is



also learnt that the defendants have forcefully throw away her parents from the suit schedule properties. All the defendants unlawfully occupied the suit schedule properties and residing in the same. The defendants are also running cloth store and saree centre in the suit schedule properties without any authority and without permission of the owner. They are earning an amount of Rs.1 Lakh per month from the suit schedule properties and thereby deprived her from enjoying the suit schedule properties.

5. After execution of the gift deed, she approached Municipal Authorities for mutation of the katha and the said process is in progress. She became absolute owner of the suit schedule properties by virtue of gift deed and is having crystal clear title. She has made all possible attempts to get occupation and possession of the suit schedule properties but all are efforts stand failed due to high handedness of the defendants. She also requested the defendants to pay at least rent for using the suit schedule properties. However, the defendants denied for the same.

6. In-spite of her repeated requests, the defendants did not come forward to handover the



vacant possession or to pay rent. The possession of the defendants in and over the suit schedule properties is illegal and unlawful. They have no manner of right and authority to occupy the suit schedule properties and thereby deprived her legitimate rights over the suit schedule properties. Soon after coming to know about the execution of the gift deed, the defendants are making hectic efforts to create third party interest over the suit schedule properties. Hence, she constrained to file this suit and this application.

7. The defendant No.1 filed the written statement and prayed to adopt the same as objection to IA No.I by filing memo. It appears other defendants did not file any written statement or objection statement to the instant application.

**OBJECTION STATEMENT OF DEFENDANT NO.1:**

8. The defendant No.1 totally traversed the case of the plaintiff and contended that the burden is on the plaintiff. The defendant No.1 also contended that there is no cause of action for filing the suit, the cause of action shown is imaginary. The suit is not valued properly and court fee paid is not sufficient. The suit is filed by the plaintiff to make wrongful gain



and to cause humiliation and to harass the defendants. The possession of the properties being not delivered to the plaintiff, no legal sanctity can be attached to the gift deed.

9. It is further contended that suit schedule properties are Hindu Undivided Joint Family properties and at no point of time it is self-acquired property of Sri B.A. Krishnamurthy. He being kartha of the joint family purchased the suit schedule properties from joint family fund and also out of sweet and hard earned money of husband of the defendant No.1 namely late Vijaya Kumar. On 16.11.2016, B.A. Krishnamurthy, the husband of defendant No.1 and another son namely Raghavendra have entered into partition deed and in the said partition suit schedule properties fell to the share of husband of defendant No.1 namely late Vijaya Kumar. The original partition deed is with the B.A. Krishnamurthy and Raghavendra. The Xerox copy was given to husband of the defendant No.1. The partition deed was drafted by one K.R. Umashankar, Advocate.

10. The plaintiff is given in marriage to one Ramesh S/o Shankarao of Kadur and he is having a



residential house and is carrying cloth business at Kalidas Nagara near Panduranga Temple. He is having sound financial capacity and earning profits from his business. The plaintiff is also quite hale and healthy and leading happy marital life with her husband and children.

11. The suit schedule properties are abutting to National Highway. The Highway authority intends to acquire a portion more than 50% of the properties for the purpose of road widening. It is the main cause to file this suit. The plaintiff is not entitled to get any relief as sought for by her. Hence, application is fit to be rejected.

12. Heard both sides and appreciated material available on record.

13. The following points arise for consideration of this Court;

**:- POINTS :-**

1. Whether plaintiff has made out prima-facie case for granting temporary injunction order?
2. Whether balance of convenience lies in her favour?



3. Whether plaintiff will be put to loss and injury if temporary injunction is not granted?
4. What order ?

14. On hearing both sides, I answer the above points 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**

15. **POINT No.1 TO 3:-** All these points are taken up together for common discussion to avoid the repetition of facts and circumstances of the case.

The plaintiff instituted this suit seeking the relief of declaration of ownership and possession of the suit schedule 'A' and 'B' properties along with mesne profits. The case of the plaintiff is that her father was absolute owner of the suit schedule properties and he gifted the same in her favour out of love and affection. Based on the gift deed she became absolute owner of the properties so gifted. The defendants herein are in illegal possession of the



same and denied to handover vacant possession of the properties to her.

16. Per contra, the defendants contended that the suit schedule properties are Hindu Undivided Joint Family properties, at no point of time the properties are joint family properties. Deceased Krishnamurthy had no authority to execute gift deed in favour of the plaintiff since the properties are purchased from the joint family nucleus etc.

17. Admittedly, the plaintiff herein seeking the relief of declaration of title and possession of the suit schedule properties based on registered gift deed dated 28.02.2024. The contents of the plaint and prayer sought are very clear that the plaintiff is not in possession of the suit schedule properties. Under such circumstances, it is bounden duty of the plaintiff to explain as to when the possession of the properties were handed over to her and as to when she is dispossessed from the same.

18. I have gone through entire contents of the plaint and affidavit filed in support of instant application. She never stated anything as to when the possession of the properties was handed over to her. Per contra, in para No.8 of the plaint, it is



pleaded by the plaintiff herself that after death of her elder brother i.e., husband of defendant No.1, all the defendants started to reside illegally in the suit schedule properties. It is also learnt to her that the defendants have forcibly drove out the parents from the suit schedule properties. It means, the defendants herein occupied the suit schedule properties during the life time of father of plaintiff.

19. As discussion above, since the plaintiff sought the relief of declaration of title based on gift deed, she has to plead her previous absolute possession over the properties so gifted and also her dispossession. But nothing is forthcoming in entire plaint and affidavit filed in support of the instant application. Under such circumstances, the inference would be that the gift deed was executed without handing over possession of the suit schedule properties.

20. At this juncture, I would like to quote Sec.122 of Transfer of Property Act which defines gift.

**122. “Gift” defined** – *“Gift” is the transfer of certain existing movable or immovable property made voluntarily and*



*without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.*

***Acceptance when to be made:-*** *Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.*

*If the donee dies before acceptance, the gift is void.*

21. The above referred section clearly mandates that acceptance of the gift is condition precedent in case of gifts. It clearly mandates that the acceptance of the gift must be made during lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void. In the case on hand, no sufficient material is available on record to establish that the gift deed is coupled with possession and the plaintiff herein accepted the gift during lifetime of her father. It creates very doubt about the case set up by the plaintiff. Under such circumstances, the maintainability of suit itself is doubtful in the present form.

22. It is well settled law of land that prima-facie case includes maintainability of suit also. When



maintainability of suit is doubtful, the inference would be that there is no prima-facie case. When there is no prima-facie case, granting of temporary injunction does not arise at all. At this juncture, I would like to quote the Judgment reported in **(2010) 1 SCC 689 (Kashimath Samsthan and Another Vs. Sriman Sudhindra Thirtha Swamy and Another)**.

*In the said Judgment, the Hon'ble Apex Court of India clearly held that the question of considering the balance of convenience or irreparable loss and injury to the party does not arise, if party fails to prove prima-facie case.*

23. I have already come to the conclusion that the plaintiff failed to make out clear prima facie case for granting temporary injunction order. Under such circumstances, as per the ratio laid down in above referred Judgment, there is no necessity to discuss much on balance of convenience and hardship that would be caused to the parties. **Accordingly, I answer Point No.1 to 3 in Negative.**



24. **POINT No.4** :- For the reasons stated and findings given on point No.1 to 3, I proceed to pass the following;

**ORDER**

The I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Sec.151 of C.P.C. is hereby rejected.

(Dictated to the Stenographer on computer, typed by her, corrected by me and then pronounced in the open court, on this the 7<sup>th</sup> day of March, 2026.)

Sd/-  
**(VAIDYA SHREEKANT)**  
SENIOR CIVIL JUDGE & JMFC.,  
TARIKERE.