

IN THE COURT OF THE ADDITIONAL CIVIL JUDGE, AND
JUDICIAL MAGISTRATE FIRST CLASS AT HONNALI.

PRESENT : Smt. Archana K. Unnithan, B.E., L.L.B.

C/C Addl. Civil Judge and JMFC., Honnali

OS No.196/2014

Dated this day of 26th February 2021.

PLAINTIFF		DEFENDANT
Halaswamy S/o Manjuntan K.V. aged about 1 ½ years, being minor represented by his natural guardian mother smt. Nagarathna @ Rathna, W/o manjunatha K. V, Aged about 35 lyers, R/o: Basavanahalli village, Honnali taluk, now R/o: Kommanalu village, Shimoga taluk. (Rep. By Sri. MG., Advocate)	V/S	1. Veerachari S/o Purvachari, aged about 66 years, 2. Smt. Kamalamma W/o Veerachari, aged about 58 years, 3. Manjunatha K.V S/o Veerachari, aged about 38 years, 4. Harisha S/o veerachari, aged about 35 years, All are R/o: Basavanahalli village, Honnali taluk, 5. Asha W/o Kira and D/o Veerachari, aged about 30 years, R/o: Gogga village, Shikaripura taluk. (Rep. By Sri. KRH., Advocate)

Parties to I.A. No.9

Applicant		Opponent
Halaswamy S/o Manjurantha K.V. aged about 1 ½ years, being minor represented by his natural guardian mother smt. Nagarathna @ Rathna, W/o manjunatha K. V.	V/S	2. Smt. Kamalamma W/o Veerachari, aged about 66 years.

Orders on I.A. No. 9

The plaintiff has filed this IA. no.9 U/o 39 Rule 1 and 2 r/w sec. 151 of CPC seeking the relief of temporary injunction against defendant no.2 from restraining the defendant no.2 from alienating , transferring or creating charge over the application schedule property pending disposal of the case.

2. In support of the IA no.9 ,the natural guardian of the plaintiff has filed affidavit stating that, the plaintiff and defendants are members of hindu joint family. It is averred that, all the properties are the ancestral properties of plaintiff and defendants. It is submitted that, 3rd defendant is the father of minor plaintiff who is addicted to bad habits and has neglected the plaintiff and his mother. It is averred that, defendant no.1, 3 and 4 colluding with each other are mismanaging the joint family properties without giving the share to the minor. It is averred that, defendant no.1, 3 and 4 are making efforts to transfer the item no.1 and 2 suit schedule properties in favour of 2nd defendant to defeat the interest of minor plaintiff . It is averred that, behind the back of plaintiff , defendant no.1 transferred

the IA schedule property in favour of 2nd defendant by executing registered gift deed dated 13-8-2013, the same is not binding on the share of plaintiff . It is averred that, on the guise of nominal khata standing in the name of 2nd defendant , defendant no.1,3 and 4 are making efforts to sell the application schedule properties. It is averred that, if the defendants alienate the property minor plaintiff would be put to great hardship and in convenience. Hence, prays to allow the application.

3. The Defendant no.2 filed objections mainly on the ground that, IA schedule property fell to the share of 2nd defendant's husband i.e., grand father of the minor plaintiff and deceased defendant no.1 gifted the property to her. It is contended that, IA schedule property is not joint family property as it is an exclusive property in the hands of deceased defendant no.1 . Hence, suit of the plaintiff is not maintainable and prays to reject the IA.

4. Heard arguments of both the learned counsels and perused the material placed on record.

5. The points arising to the consideration of this court

- 1. Whether the plaintiff has made out prima facie case?*
- 2. Whether the balance of convenience lies in favour of plaintiff?*
- 3. Whether plaintiff is put to irreparable loss and injury ?*
- 4. What order?*

6. My findings to the above points are as follows:

Point no.1: In the Affirmative

Point no.2: In the Affirmative

Point no.3: In the Affirmative

Point no.4: As per the final order for the following:

REASONS

7. Point no.1 to 3 : Since, the facts are inter connected. In order to avoid repetition of facts point no.1 to 3 are taken up together for consideration.

On perusal of the IA and objections filed it is observed that, the parties have admitted their relationship. It is observed that, 3rd defendant is the father of minor plaintiff and mother of the plaintiff are having a strained relationship between them. The only objection raised by the 2nd defendant is that, item no.1 of the IA schedule property was gifted to her by her husband . It is stated that, the IA schedule property was purchased by the father-in-law of defendant no.2 and after his death fell to the share of defendant no.2, which was gifted to defendant no.2 by virtue of gift deed.

8. On perusal of Ex.P.7 produced by plaintiff it is observed that,IA schedule property was gifted in favour of 2nd defendant by the deceased defendant no.1. Whether the said property becomes absolute property of the deceased defendant no.1 and whether the deceased defendant no.1 had rights to gift the property needs to be ascertained by a full fledged trial. Further, from the averment of the defendant no.2 it is clear that, said property was originally purchased by her father-in-law which devolved upon defendant no.1 after death of his father . The question regarding the gift cannot be considered at this stage.

9. As the relationship between the parties are admitted it is noticed that, plaintiff has right over his grand father's property. Accordingly, this court arrives at the finding that, plaintiff has proved the prima facie case. Further, owing to the strained relationship between the parties there are every chances that, the defendant no.2 might alienate the property to defeat the interest of the plaintiff . Accordingly, this court arrives at the finding that, balance of convenience, irreparable loss and injury lies in favour of plaintiff. Accordingly, at this court proceeds to answer **point no.1 to 3 in affirmative,**

9. **Point no.4:** Hence, this court proceed to pass the following :

//ORDER//

The IA no.9 filed by the plaintiff is hereby allowed.

The defendant no.2 is hereby restrained from alienating, transferring or creating any charge over the application/petition schedule property till disposal of the suit.

No order as to cost.

(Smt. Archana K. Unnithan)
C/c Addl. Civil Judge and JMFC.,
Honnali.