

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., AT PUTTUR**

: PRESENT :

**Smt. Priya Ravi Joglekar, B.com., L.L.M,
Additional Senior Civil Judge & JMFC.,
Puttur, D.K.**

DATED THIS THE 3rd DAY OF FEBRUARY, 2023.

:: OS NO.52/2021 ::

- Plaintiffs
1. Mrs. Jyothi Rani @ Jyothi Alva,
W/o. Mr. K.Devadas Alva,
D/o. Late. Rathnakar Shetty and
Late. Shakunthala R. Shetty,
Aged about 54 years,
R/at. Flat No.507,
Krishi heritage apartment,
Opposite Govinda Das College,
Behind Darshan building,
Mangalore Udupi road,
Surathkal, Mangalore - 575014
 2. Mrs. Roopa Rani @ Roopa Poonja,
W/o. Late Radhakrishna Poonja,
D/o. Late. Rathnakar Shetty and
Late. Shakunthala R. Shetty,
Aged about 52 years,
R/at. Flat No.206,
Arhath – Aditya apartments,
Opp. Nishmitha house, Ponnechari road,
Mastikatte, Moodabidri.

(By Sri. VK/CRN/DVK Advocates)

-V/s-

Defendant : **Mr. Ravikiran Shetty,**
S/o. Late. Rathnakar Shetty and
Late. Shakunthala R. Shetty,
Aged about 55 years,
R/at. Bedradi,
Nettanige Mudnoor village,
Puttur taluk, D.K.,

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

ORDERS ON IA NO.II

The plaintiff filed an application U/o 39 Rule 1 & 2 and Sec.151 of CPC, to restrain the defendant from transferring, alienating, conveying or creating any sort of encumbrance over the plaint schedule properties till disposal of the suit.

2. The above application is accompanied by an affidavit sworn by the plaintiff No.1. She contended that suit schedule properties have allotted to the absolute share of one Mrs. Shakuntala R Shetty, who is the mother of plaintiffs and defendant in partition deed dated 26-12-2006. Therefore, Shakunthala R Shetty has absolute share in the suit schedule properties. She was residing along with her son (defendant) in the portion of the plaint schedule properties.

3. Due to various ailments and her mental health, including loss of memory, she has also restricted to her residence and she was unable to think on her own and take independent decisions. She has hospitalized at Puttur and Mangalore for treatment. The two

daughters of Shakuntala R Shetty namely plaintiffs have taken care of their mother Shakuntala R Shetty. They have expended their money for medical treatment of Shakuntala R Shetty. She has also love and affection with all the children, but due to the undue advantage of her age, mental ill-health and ailments, the defendant had fraudulently fabricated a document styled as "Settlement Deed" allegedly dated 06-03-2020 and got registered on 10-03-2020. Further the suit schedule properties has been also changed into the name of the defendant on the basis of Settlement Deed. The above said settlement deed is created by the defendant, because Shakuntala R Shetty was not in a position to think on her own and taking independent decision to execute any document. The plaintiffs are co-owners of the suit schedule properties, but the defendant by taking undue advantage relating to changing the khatha of suit schedule properties into his name he is trying to alienate the suit schedule properties into the third parties. The plaintiffs have 1/3rd share over the suit schedule properties. Therefore, the plaintiffs have filed above said application for restraining the defendant from alienate the suit schedule properties into the 3rd parties.

4. On the other hand, the defendant has filed objection to the above said application. He admitted the relationship between the plaintiffs and defendant and partition deed dated 26-12-2006. Thereafter, he denied all the averments made in the above said application. He also admitted that, Shakuntala R Shetty had died on 22-07-2021 due to Covid 19 virus infection. According to the partition deed the share allotted jointly into Shakuntala R Shetty and defendant. The plaintiff No.1 is residing in their own house at

Nasik of Maharashtra along with her family and her husband employed at Vijaya Bank. Later on she moved to Mumbai and got settled in Surathkal, Mangalore above 100 kms away from plaintiff schedule properties. During vacations plaintiff No.1 used to go to Nasik and spend time with her family and she has never visited her mother. Plaintiff No.2 living with her family at Baruch, Gujarat and her husband was employed as a Engineer in a company called "Endophil". He died on 2016. The plaintiff No.2 owns a house building at Baruch, leased the ground floor and now receiving rental income from that building. In about 2018, she took a house in Moodabidre only to educate her son in MITE, Moodabidre. Therefore, the plaintiffs were not concerned with their mother and never took care of her. Shakunthala R Shetty was not only managing her properties but also managing properties of her brother Ravindranatha Rai as per GPA. She was capable of carrying out of agricultural operations and management of properties. She had studied up to matriculation (11th std) at St. Victor's Girls High School, Puttur. She used to read novels, news papers etc. Therefore, she is well worth knowledge person to capable understanding all the world wide transactions. Therefore, she has executed Settlement Deed on 06-03-2020 and registered on 10-03-2020 in favour of defendant with her free-consent, it is not a fraudulent document. Therefore, on the basis of settlement deed the Khatha of the suit schedule properties changed into the name of the defendant. Therefore, the plaintiffs have not right over the suit schedule properties and they are not having 1/3rd share each over the suit

schedule properties. Therefore, the application is not maintainable and liable to be dismissed.

5. I have heard both sides. The following points arise for my consideration.

1. Whether the plaintiffs have made out prima facie case to grant temporary injunction?
2. Whether irreparable loss and injury will be caused to plaintiffs if an order of temporary injunction is not granted?
3. Whose favour balance of convenience lies?
4. What order?

6. My findings on the above points are as under:

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| Point No.1 : | In the Affirmative. |
| Point No.2 : | In the Affirmative. |
| Point No.3 : | Balance of convenience
lies in favour of plaintiffs |
| Point No.4 : | As per final order
for the following: |

REASONS

7. **POINT No.1 and 2:** Since these points are interlinked with each other, they are taken up together for common discussions in order to avoid the repetition of facts.

The plaintiffs have brought this suit against the defendant and filed interim application against the defendant for seeking the relief of temporary injunction. The plaintiffs have supposed to establish the existence of prima facie. For the purpose of granting temporary injunction, existence of prima facie case is imperative. With this

background, now I wish to ascertain whether the plaintiffs have making out prima facie case or not.

8. According to the plaintiffs the suit schedule properties allotted to the share of the Shakunthala R Shetty and defendant jointly as per the partition deed dated 26-12-2006. Therefore, they are absolute share holders of the above said suit schedule properties. Shakunthala R Shetty due to her old age ailments lost her memory and mental health. At that time, the defendant has taken undue advantage of her ill-health and created a settlement Deed dated 06-03-2020 and registered on 10-03-2020. This document is fraudulently created by the defendant to grab the 'A' suit schedule properties. The plaintiffs are daughters of Shakunthala R Shetty and they have taken care of Shakunthala R Shetty of her old age ailments. They have hospitalized Shakunthala R Shetty at Puttur and Mangaluru hospital. They have expended more amount to the treatment of Shakunthala R Shetty. She had died on 22-07-2021. The plaintiffs are co-owners of suit schedule properties. Therefore, they have 1/3rd share over the suit schedule properties. But the defendant after taking undue advantage of settlement deed 06-03-2020, he has got changed the khatha of the suit schedule properties into his name and trying to alienate the suit schedule properties. Therefore, in order to restrain the defendant to alienating the suit schedule properties, the plaintiffs have filed the above said application.

9. In support of these contentions the plaintiffs have produced RTC extract, Settlement deed, survey sketch, death certificate of Shakunthala R Shetty, medical bills and discharge summary etc.

10. On the other hand, the defendant contended that, Shakunthala R Shetty has died due to the ailment of Covid-19. During her life time, her brother by name Ravindranatha Rai has also executed GPA in favour of Shakunthala R Shetty for managing the property. Further she was also managing the suit schedule properties. He has taken care of his mother at the time of her ailment. She had studied upto the matriculation. She has executed settlement deed in favour of defendant with her free consent. He specifically denied settlement deed is fraudulently fabricated and created document. He contended that, on the basis of settlement deed the khatha of the suit schedule properties changed into the name of the defendant. Therefore, the plaintiffs are no liberty to claim 1/3rd share over the suit schedule properties. In support of his contention he has not produced any documents before this court.

11. On careful perusal of the records, it is clearly noticed that there is dispute between the plaintiffs and defendant relating to suit schedule properties with respect to the registered settlement deed dated 6-03-2020 is genuine document or not. According to the plaintiffs the above said document is created by the defendant and got changed the khatha of the property into his name. But, the suit schedule properties jointly allotted to the share of the defendant and Shakunthala R Shetty. Therefore, after the death of the

Shakunthala R Shetty they have 1/3rd share over the suit schedule properties. The defendant denied that the above said registered Settlement deed dated 06-03-2020 is created document. But RTC extracts were produced by the plaintiffs itself goes to show that, the khatha of the suit schedule properties changed into the name of the defendant on the basis of registered settlement deed. If the interim relief is not granted in favour of the plaintiffs, then, it is clear apprehension to the plaintiffs with respect to the defendant may alienate the property into the 3rd party. Before the conclusion of the trial, this court has not come to the opinion that, whether the defendant is trying to alienate the suit schedule property or not. If the interim application is not granted, then the already the khatha of the suit schedule properties are in the name of the defendant, then it may possible to the defendant to alienate the suit schedule properties into the third parties. Therefor, the apprehension explained by the plaintiffs in the above said interim application is believable and reliable. In order to protect the above said suit schedule properties till the disposal of the suit, it is necessary to grant the temporary injunction over the suit schedule properties. Accordingly, I answered **point No. 1 and 2 in the affirmative.**

12. **Point No. 3** : In view of my findings on Point No. 1 and 2, there is prima facie case is available in favour of the plaintiffs. Mere existence of prima facie case will not empower the plaintiffs to get the discretionary relief of the injunction. In this case, there is no dispute relating to the relationship between the plaintiffs and defendants. There is dispute with respect to the suit schedule

properties are relating to settlement deed dated 06-03-2020 and khatha changed into the name of the defendant. Such being the case, there is possibility of defendant may alienate the suit schedule properties into the third parties, then definitely it will affect the right of the plaintiffs.

13. The interim order will be the antidote to protect the existing nature of the property. In this regard, it is just and necessary to quote the following judgment to know the value of the interim order.

ILR 1988 Kar. 2817

(Life Insurance Corporation V/S Bangalore LIC Employees)

(equivalent citation 1988 KLJ 455, 1988 (2) Kar. L.J 455)

“The preventive remedy of injunction is thus granted as a instant antidote to stop or prevent the invasion of the plaintiff's right in regard to which a complaint is made. The court having regard to the expediency involved should not embark upon a nit-picking operation at that stage by holding a mini trial to lay thread-bear the case of the plaintiff to find out if a prima facie case is made out or not. It would be sufficient if the court is assured that questions raised by the plaintiff are not vexatious or too casual. But there are such as to merit serious consideration at a subsequent stage. That such is the content and frontiers of the expression prima facie case is also the view of Govinda Bhatt

Justice (as his Lordship then was) in the case of State of Karnataka V/S S.Venkataraju, 1975 (1) Kar. L.J. 142 and Jaganatha Shetty (J) (as his Lordship then was) in J.Krishnamurthy V/S Bangalore Turff Club in ILR. Kar. 1975, 1957)”

14. If the interim order is granted by restraining the defendant from alienating the suit schedule properties till disposal of the case, no prejudice will be caused to the defendant. On the other hand, if the defendant alienated the suit schedule properties, it will definitely affect the right of the plaintiffs. Hence, on these grounds, the plaintiffs are entitled for the relief of injunction as prayed in the I.A. By considering all these facts, the plaintiffs have made out balance of convenience and irreparable loss in their favour. Accordingly, **point No. 3 is answered in the affirmative.**

15. **Point No. 4:** On the above said reasonings, I proceed to pass the following order.

ORDER

I.A. No. II filed by the plaintiffs under order 39 rule 1 and 2 R/W Section 151 of C.P.C. is hereby allowed.

The defendant is hereby restrained from transferring, alienating, conveying or creating any sort of encumbrance over the schedule properties, till the disposal of this case.

No order as to cost.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open Court on this the day 03rd day of February 2023).

**Addl. Sr. Civil Judge and JMFC,
Puttur, D.K.,**