

**IN THE COURT OF PRL.CIVIL JUDGE AND PRL.JMFC,
DHARWAD**

-: PRESENT :-

**Sri.Malleshi Parashuram Mohite.,
B.A(Law).,LL.B.,
Prl. Civil Judge & Prl.J.M.F.C., Dharwad**

Dated this the 16th day of July -2024

Original Suit No.733/2023

BETWEEN

1. Smt. Vinodabai W/o. Chidanad Pattar.
.....Plaintiff
(By Sri.M.D.J., Adv.)

V/s.

1. Mouneshwar S/o. Chidananad Pattar.
.....Defendant
(By.Sri.S.B.H Adv.,)

PARTIES TO I.A.NO.II

1. Smt. Vinodabai W/o. Chidanad Pattar.
.....Applicant/plaintiff

V/s.

1. Mouneshwar S/o. Chidananad Pattar.
.....Opponent/Defendant

ORDER ON I.A.NO.II

This application is filed by the plaintiff against the defendant, his agents, henchmen and any other persons on his behalf of seeking an order of temporary injunction from alienation of the suit property.

2. In the accompanying affidavit it is stated that the plaintiff has filed this suit against the defendant for the relief declaration. The plaintiff is the owner of the suit property. Defendant is the son of the plaintiff. Plaintiff has executed gift deed in favour of the defendant the alleged gift deed is executed by way fraud, fresher and coercive. The actual possession of the suit property is not completed in accordance with law. Therefore, if the application is not allowed plaintiff will be put to irreparable loss. Hence, plaintiff prays to allow the application in the interest of justice.

3. On the other hand, defendant has filed his written statement and contended that defendant is the owner of the suit property by virtue of Gift deed dated

17-01-2016. His name is appeared in the property extract. Defendant never neglected the plaintiff he has look after the plaintiff after Gift deed. Hence, on these grounds he prays to reject the application.

4. I have heard the arguments of both sides. Perused the materials available on record.

5. The following points would arise for my consideration;

1. Whether applicant/plaintiff has made out prima-facie case?
2. In whose favour the balance of convenience lies?
3. Who will be put to irreparable loss or injury if temporary injunction is not granted?
4. What order ?

6. My answer to the above points are held as under.

Point No. 1 : In the Negative.

Point No. 2 : In favour of the defendant.

Point No. 3 : Defendant will be put to irreparable loss.

Point No. 4 : As per final order for the following.....,

: R E A S O N S :

7. **POINTS NO. 1 to 3 :-** These points are inter-linked with each other, hence they are taken together for common consideration in order to avoid repetition of facts.

8. The present suit is filed by the plaintiff against the defendant for the relief of declaration, declaring that the alleged Gift deed dated 07-01-2016 is null, void and ab-initio and not binding on the plaintiff. The plaintiff has filed I.A for temporary injunction restraining the defendant from alienation of suit property. Defendant objected to the present application. Perused the available material on record, the alleged Gift deed is executed on 07-01-2016 which is registered one. Later on the name of the defendant is mutated in the property extract as per gift deed. Therefore, at this juncture prima-facie the defendant is owner in possession over the suit property. The contention raised by the plaintiff that the alleged gift deed is executed by way of fraud, pressure is to be considered only after

conclusion of trail. Therefore, under such a circumstances to grant the temporary injunction against the defendant it required full pledge trail. The material available on record, it shows that the plaintiff has not made out prima-facie case. Therefore, at this stage the plaintiff has made out grounds to allow the application. Then irreparable loss and damages caused to defendant than the plaintiff. The balance of convenience lies in favour of the defendant then the plaintiff. Hence, I answer point No.1 in the negative and points No.2 and 3 in favour of defendant.

9. **POINT NO.4:-** For the reasons stated above, I proceed to pass the following.....

O R D E R

I.A.No.I filed by the plaintiff U/O.39 Rule 1

and 2 R/w Sec.151 of CPC is hereby rejected.

No order as to cost.

(Dictated to the stenographer transcribed and computerized by her, then script corrected and signed by me and pronounced in the open court dated this **16th day of July 2024**).

(Malleshi.Parashuram. Mohite)
Prl.Civil Judge & Prl. JMFC,
Dharwad.