

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE & J.M.F.C.,

HUBBALLI

Present:

Sri. RAGHAVENDRA.R.

B.A.L, L.L.B.

I Additional Senior Civil Judge and JMFC.,  
Hubballi.

OS No.525/2023

Dated this the 01<sup>st</sup> day of February, 2024

Plaintiff : Sri. Narayan S/o Gurunath Nalavadi.

.Vs.

Defendant/s : Smt. Yallavva W/o Giriyappa Nalvadi and  
others.

PARTIES TO I.A. No.I

Applicant/s : Sri. Narayan S/o Gurunath Nalavadi.

.Vs.

Opponent/s : Smt. Yallavva W/o Giriyappa Nalvadi and  
others.

- i. Provision under which application is filed : Under Order 39 Rule 1 and 2 R/w Sec.151 of CPC
- ii. Relief sought for : To restrain the defendants No.7, her henchmen servants, agents or any person dclaimining under her from encumbering or from creating any charge over the suit scheudle A item No.3 and 4 and schedule B propertiestill disposal of the suit.

- iii. The date on which : 14.12.2023  
application is filed
- iv. Number of the : I  
application
- v. The date on which : D.5 and D.7, dt:08.01.2024  
objections are filed by  
different opponents
- vi. The date on which : 01.02.2024  
orders were passed on  
the said application

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### **ORDERS ON IA No.I**

This order arises out of interlocutory application No.I filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendants No.7, her henchmen servants, agents or any person disclaiming under her from encumbering or from creating any charge over the suit schedule A item No.3 and 4 and schedule B properties till disposal of the suit.

2. The brief facts of the affidavit annexed to application is that, the plaintiffs have filed this suit for partition and separate possession. The suit schedule A and B are ancestral joint family properties of plaintiff and defendants and the plaintiff having share over the same. The defendant No.5 who is elder son of propositus and he is manager of joint family. That during life time of propositus he has sold house property and income arising out of the said property and income of the suit schedule item No.1 and 2 properties, the suit schedule A-item No.3, 4 and schedule B properties were purchased in the name of defendant No.5. The defendant No.5

taking undue advantage of his name appeared in the said property having illegally and high handedly with intention to defeat his valuable rights in the said properties has executed the alleged registered gift deeds dated 14.07.2023 in respect item No.3 and 4 of Schedule A property and B Schedule properties in favour of the defendant No.7. The defendant No.7 trying to alienating those properties to third persons. The plaintiff learnt that, the defendants are making efforts to creating encumbrances and charges over the suit properties only deprive the rights of the plaintiff. If the defendant No.7 has not restrained by an order, the plaintiff would be put irreparable loss and material injustice will be caused. Hence, the plaintiff filed this interim application for supra relief.

3. The defendant No.5 filed the written statement and same is adopted by the defendant No.7 by filing memo. The defendant No.5 and 7 have have resisted the application by filing written statement as objections to the application. The defendant No.5 has contended that, the description of item No.1 and 2 of A schedule property are not properly described. Item No.3 and 4 and schedule B properties are self acquired properties of defendant No.5. It is submitted after death of Giriyappa Krishnappa Nalavagi, the plaintiff and defendants are the nearest legal heirs of Giriyappa. The defendant No.5 further denied the nature of the suit properties. On 10.05.1999 in the presence of the witness and elders, the propositus Giriyappa and his children have entered into mutual partition/arrangement deed. Accordingly, it was decided that, item No.1 of Schedule A shall be given to Dundappa and Gurunath i.e., father of the plaintiff to the extent of 01 acre 35 guntas each and item No.2 schedule A shall be

given to defendant No.5 which is admesaruving 01 acre 28 guntas. However, both the item No.1, 2 of schedule A property along with the residential house and back yard shall be retained with the parents till their life time and after their death the children names should be entered. Accordingly, the children of Giriyappa started residing separately. As such, concept of joint family came to an end. The plaintiff has filed OS No.722-2008 before IV Additional Civil Judge, Hubballi and in the said suit present defendant submitted the similar kind of written statement. The said suit came to be dismissed for non-prosecution on 06.08.2010. It is submitted that, brother of defendant No.5 i.e., Dunadappa has also filed a suit under OS No.443-2017 for partition and separate possession. The said suit is also came to be dismissed for non-prosecution. The defendant No.5 submits that, the plaintiff has filed this suit only to give harassment and trouble to them. Hence, , the defendants No.6 and 7 prayed to dismiss the suit as well as interim application with costs.

4. I have heard the arguments canvassed by learned counsel for plaintiff. Arguments on other side taken as nil.

5. The following points are for my consideration.

- Point No.1: Whether the plaintiff has made out a prima facie case in their favour ?
- Point No.2: Whether balance of convenience lies in favour of the plaintiff ?
- Point No.3: Whether the plaintiff would suffer irreparable loss and injury if the temporary injunction is not granted as prayed by them in interim application ?

- Point No.4. What order?
6. My findings to the above points are as under.
- Point No.1: In the affirmative.
  - Point No.2: In the affirmative.
  - Point No.3: In the affirmative.
  - Point No.4: As per final order, for the following;

### REASONS

7. **Point No.1 to 3:** These points are interlinked each other, as such I considered these points together to avoid repetition of facts of the case and for common discussion. The plaintiffs have filed this suit for partition and separate possession. It is main contentions of the defendants No.5 and 7 that, Item No.3 and 4 and schedule B properties are self acquired properties of defendant No.5 and On dated 10.05.1999 in the presence of the witness and elders, the propositus Giriyappa and his children have entered into mutual partition/arrangement deed. It is undisputed fact that, the alleged documents viz gift deeds are duly registered one. The Hon'ble Supreme Court has held in a decision reported in <sup>1</sup>(2006) 5 SCC 353 that:

**“ There is presumption that a registered document is validly executed. A registered document, therefore, prima-facie would be valid in law. The Onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, respondent has not been able to rebut the said presumption.”**

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<sup>1</sup> Prem Singh and others Vs Birbal and others.

So, the plaintiffs ought to have rebut the presumption by leading cogent evidence. The plaintiff has pleaded that, the defendant No.5 has gifted the properties mentioned in the application only to deprive the rights of the plaintiff over the same. Records of rights extract produced by the plaintiff pertaining to survey No.123 is jointly standing in the name of defendant No.1, 2, 5 to 7. Like wise Item No.2 of A schedule property is also standing jointly in the name of the name of defendant No.1, 2, 5 to 7. Item No.3 and 4 of A schedule property is standing in the name of defendant No.5. Now these two properties are standing in the name of defendant No.7. It is worth to note that, the defendant No.5 has referred his avocation in the alleged gift deed as Agriculture. It is not the case of the defendant No.5 that, he was doing agriculture work in other lands. So, at this prima- facie stage, it can be presumed that, the main income of the plaintiff and defendants family is only from agriculture. The defendant No.5 ought to have prove the severance of the joint family and also acquisition of schedule B and item No.3 and 4 of A Schedule property. It is worth to note herein that, the relationship of the parties are not in dispute. The plaintiffs have pleaded in the plaint that, the suit properties are joint family properties. So, both the parties ought to have establish their respective pleadings by way of adducing cogent evidence. At this juncture, it is very difficulty to give specific finding on the rival contentions of the parties. It can be gathered from the written statement of the defendant No.5 that, the defendant No.7 has no intention to alienate the properties referred in the interim application. But, if the apprehension of the plaintiff has been happened or occurred, then the situation might be irreversible

at the time of disposal of the case and it can not to be compensated in terms of money.

8. It is well settled principle of Law that, the discretion of the Court is exercised to grant a temporary injunction only when the plaintiffs have made out existence of prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; when the need for protection of the defendant's right is compared with or weighed against the need for protection of the defendants rights, the balance of convenience tilting in favour of the plaintiffs and clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction order is not granted. The facility to Principles Governing Grant of Injunction is at the discretion from the Court. This foresight, however, should be exercised reasonably, judiciously as well as on sound lawful principles. Injunction must not be lightly granted mainly because it adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. It is a well settled principle of law that interim relief can always be granted in the aid of and as ancillary to the main relief available to the party on final determination of his right in a suit or any other proceeding.

9. Therefore, the Court undoubtedly possesses the power to grant interim relief during the pendency of the suit. Temporary injunction restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further orders of the Court. As I discussed above, the entire written statement of the

defendants No.5 does not depict that, the defendant No.7 is in hurried manner to dispose off the suit schedule properties. It is true that, If the acts of the defendants No.7 has been postponed some time, no harm would be caused to defendants but injunction can not be lightly granted mainly because it adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. By considering the all the materials on record it is appears to Court that, even though, no intention was found in the written statement of the defendants No.5 and 7, it is safe and necessary to issue prohibitory order against the defendants No.7 as prayed in the application in order to avoid multiplity of the proceeding between the parties as well as to keep the suit properties intact. In other words, the plaintiff has established the prima facie case and balance of convenience to get the relief as prayed in the application. If the defendant No.7 has succeeded in creating any encumbrance over the properties referred in the application, it can not be compensated in terms of money. Hence, I answer **point No.1 to 3 in the affirmative.**

10. **Point No.4:** As per following;

### **ORDER**

**Interlocutory Application No. II filed by the plaintiff under Order XXXIX rules 1 and 2 of Code of Civil Procedure is hereby allowed with costs.**

**The defendants No.7 is hereby temporary restrained from alienating or creating charge over**

**the item No.3 and 4 of A schedule property and  
Schedule B properties till disposal of the suit.**

(Directly typed and computerized by me in laptop and corrected, signed and then pronounced by me in Open Court on this the **01<sup>st</sup> day of February 2024**)

(Raghavendra. R)  
I Addl. Senior Civil Judge and JMFC,  
Hubballi.