

**IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE AND  
J.M.F.C. AT ANEKAL**

Dated this the 30<sup>th</sup> day of January, 2023

**: PRESENT :**

**Sri. SHRIKANTA N.A.,** B.A., LL.B.,  
II Addl. Senior Civil Judge & J.M.F.C.,  
Anekal.

**O.S.No. 1140 / 2022**

**PLAINTIFFS** : 1. Smt. Sanju Behera  
W/o Rajkumar Behera,  
Aged about 44 years,  
  
2. Sri. Deepak Behera  
S/o Rajkumar Behera,  
Aged about 24 years,  
  
3. Sri. Harsha Behera,  
S/o Rajkumar Behera,  
Aged about 20 years,

All are R/at No.19, Raju Building,  
Opp: St. Mary School,  
Hebbagodi, Bommasandra Post,  
Anekal Taluk,  
Bengaluru – 560 099.

(Represented by Sri. K.V.R., Advocate)

**V/s**

**DEFENDANTS :** 1. Sri. Rajkumar Behera  
@ Gauranga Behera  
S/o Surendrakumar Behera,  
R/at No.1, Venugopal Reddy Building,  
Hebbagodi village, Attibele Hobli,  
Anekal Taluk,  
Bengaluru Urban District.

And also R/at Alagakaira,  
Near Animal Hospital,  
Opp : Airtel Tower,  
Balasore District,  
Odisha State – 756 048.

2. Sri. Jayanth Kumar Patra  
S/o late Bhaskar Chandra Patra,  
Aged about 41 years,  
R/at No.45/4, Devamma Building,  
Near St. Marry School,  
Hebbagodi, Bommasandra Post,  
Anekal Taluk,  
Bengaluru – 560 099.

(Represented by Sri. P.V.V., Advocate for D2,  
D1 - party in person)

**-: COMMON ORDER ON I.A. No.I & IV :-**

The I.A.No.I and IV are under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC filed by the plaintiffs praying for an order of temporary injunction restraining the defendant No.2 from alienating or encumbering the suit schedule property and interfering with plaintiffs possession and enjoyment of the said property. These applications are supported by affidavits of the plaintiffs No.2 and 1 respectively. In the affidavits and in the plaint, the plaintiffs have raised identical contentions.

2. It is stated in the affidavits filed in support of above applications that the marriage between the plaintiff No.1 and the defendant No.1 was solemnized in the year 1997 at Orissa and at that time, the parents of the plaintiff No.1 have given jewels to them. After the marriage, they started matrimonial life at Koramangala, Bengaluru. They have jointly started a private canteen at Eureka Forbes Company Pvt. Ltd.,

Koramangala by selling the jewels of the plaintiff No.1. Thereafter, they improved and developed the canteen business and established canteens in different places of the same Company. Out of their hard earned money, the defendant No.1 purchased a site at Gollahalli village. From the said wedlock, the plaintiff No.2 and 3 were born to them and they have been provided with education from the earnings of the canteen business.

3. It is further stated that the land bearing Sy.No.19 measuring 02 guntas situated at Hebbagodi village, Attibele Hobli, Anekal Taluk was purchased in the name of defendant No.1 out of hard earned and saved money of the plaintiff No.1 and defendant No.1 vide registered sale deed dated 02.12.2010. Thereafter, they intend to construct the residential house in the said property. But, their earnings in the canteen business was not sufficient to construct the building therein. Hence, they

sold the property purchased at Gollahalli village and started to construct a RCC roofed building in the said property. Due to shortage of funds, the plaintiff No.1 started to work in Mico Labs Pvt. Ltd. and invested her salary earnings to construct the building. The plaintiff No.2 and 3 were supporting the defendant No.1 in the canteen business at their leisure and on holidays.

4. The plaintiffs and defendant No.1 completed the building having ground and three floors in the said property by obtaining loan from the Kaveury Grameena Bank, Hennagara Branch. The plaintiffs and defendant No.1 resided in the building and also let out two floors for rent. Out of the rents collected, earnings from the canteen business, pledging the jewels of plaintiff No.1 and salary of the plaintiff No.1, cleared the above Bank loan. Therefore, the plaintiffs and defendant No.1 are having equal right over the said property which is

morefully described in schedule of the plaint and hereinafter referred to as “suit property” for short.

5. It is further stated that the defendant No.1 is a drunkard and womanizer who is closely moving with the defendant No.2 and his wife – Smt. Meenakshi Biswal. The defendant No.1 started to avoid the plaintiffs, quarreled, misbehaved, threatened and assaulted the plaintiffs. When the plaintiffs demanded the defendant No.1 during last week of July, 2022 partition of the suit property, he postponed to effect partition. When the plaintiffs again demanded during 2<sup>nd</sup> week of September, 2022, the defendant No.1 refused to effect partition and disclosed that he has gifted the suit property in favor of defendant No.2 vide Gift Deed dated 24.08.2022. The defendant No.1 has no right to execute that document and the same is a void document and hence, not binding on the share of the plaintiffs.

6. It is further stated that the plaintiffs are residing in the suit building and collecting rents from the tenants. The defendant No.1 has not handed over actual possession of the suit property in favor of the defendant No.2. However, on the basis of the aforesaid fraudulent Gift Deed, the defendant No.2 is making arrangements to alienate and encumber the suit property in favor of third parties to defeat the rights of the plaintiffs. Further, defendant No.2 is making hectic efforts to forcibly take possession of the suit property from the plaintiffs. Hence, the plaintiffs have filed this suit and the applications. The plaintiffs have raised usual plea of prima facie case, balance of convenience and irreparable loss and injury, by contending so, they prayed for allowing the applications.

7. The defendant No.2 filed written statement and counter affidavits by way of objection to I.A.No.I and IV. In the written statement and counter affidavits, the defendant No.2 has raised identical contentions.

8. It is contended by the defendant No.2 that the suit property is the self-acquired property of defendant No.1 and he purchased and constructed the building in the said property by investing his own funds. The plaintiffs have no right over the suit property.

9. The defendant No.1 being the absolute owner has executed Gift Deed dated 23.08.2022 in favor of defendant No.2. The plaintiffs have no right to question the said document or to file this suit. The plaintiffs have filed this suit by creating false story to harass the defendants. Hence, prayed to dismiss the applications.

10. Heard the arguments of the learned counsel for respective parties and perused the available materials on record. The counsel for the plaintiffs has also relied on a decision reported in **(2021) 3 Kant.L.J. 79** in a case between *M.Narayanaswamy*

*dead by LRs V/s M.Narayanappa.* This court has gone through the above decision and noted the ratio laid down therein.

11. Now the points that arise for consideration of this Court are as follows;

**:- P O I N T S :-**

- (1) Whether the plaintiffs have made out a prima facie case ?
- (2) Whether the plaintiffs have balance of convenience in their favour ?
- (3) Whether the irreparable loss and injury would be caused to the plaintiffs if the temporary injunction is not granted ?
- (4) What order ?

12. After hearing the arguments and going through the records on the file, the findings on the above points by this Court are as under;

Point No.1 to 3                      -              In the Affirmative,

Point No.4                         -              As per the final order  
for the following;

**-: R E A S O N S :-**

13. **Point No.(1):** The person has to establish prima facie case, balance of convenience and irreparable loss and injury to succeed in an application seeking temporary injunction order. The applicant must make out a prima facie case in support of the right claimed by him. He should satisfy the court that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. With this perception, the court intends to proceed with the facts and circumstances of this case.

14. The plaintiffs have filed this suit against the defendants for the relief of partition and separate possession of the suit property, to declare that the registered Gift Deed dated 24.08.2022 executed by defendant No.1 in favor of defendant No.2 is not binding on the plaintiffs and for permanent

injunction to restrain the defendant No.2 from alienating or encumbering the suit property in favor of third parties.

15. It is not in dispute that the 1<sup>st</sup> plaintiff is the wife and plaintiff No.2 and 3 are sons of defendant No.1. It is also not in dispute that the suit property was purchased in the name of defendant No.1 vide registered sale deed dated 02.12.2010 and thereafter, a building measuring 1760 Sq. Feet consisting of ground and three floors was constructed in the said property. It is further admitted fact that the plaintiffs are residing in the building constructed in the suit property. What is disputed is the right of the defendant No.1 to execute the Gift Deed in favor of defendant No.2 and the right of the plaintiffs over the suit property.

16. According to the plaintiffs, though the suit property was purchased in the name of defendant No.1, the plaintiffs have contributed their funds and labour for purchasing the said

property and constructing the building in it. On the other hand, the defendant No.2 has seriously disputed the said fact and contended that the suit property was the absolute property of the defendant No.1 and the plaintiffs have no right over the said property.

17. The plaintiffs have produced salary slip of the plaintiff No.1 for the year 2016-17 which shows that she was working at A.K.P. Enterprises and drawing monthly salary. The gold loan acknowledgment slip produced by the plaintiffs shows that the plaintiff No.1 has availed gold loan of Rs.75,000/- from Karur Vysya Bank on 27.07.2022. The defendant No.1 not yet filed his written statement. Admittedly, the defendant No.2 is not a relative or family member of the plaintiffs and defendant No.1. The defendant No.2 has not produced any document at this stage to show that the building in the suit property was constructed only by investing the funds of the defendant No.1.

There is nothing on record at this stage to establish the independent source of income of defendant No.1 to purchase the suit property and to construct a building therein. Therefore, at this stage the case of the plaintiff cannot be considered as baseless without conducting a detailed trial.

18. The materials on record at this stage show that the relationship between the plaintiffs and defendant No.1 was strained. The recitals in the Gift Deed dated 23.08.2022 show that the defendant No.2 is a neighbour and close friend of the defendant No.1. It is argued by the learned counsel for the plaintiffs that the above Gift Deed was obtained by the defendant No.2 by collusion and fraud with an intention to grab the suit property. Admittedly, the plaintiffs being the natural heirs of the defendant No.1 are not parties to that document. Therefore, to decide the dispute with regard to legality of the above Gift Deed a detailed trial is required.

19. Prima facie case means the plaintiff must, by making positive averments, asserts that he has a strong case and a legal right to the property in suit, which has to be preserved and protected. It is not necessary for the plaintiff to prove by evidence. But, at least he must show that he has a strong prima facie case and there is every chance of his success in the case. Existence of prima facie case is an essential condition for the issuance of an interim injunction, provided the two other conditions namely, balance of convenience and irreparable injury are satisfied. Prima facie case does not mean prima facie title. Prima facie case exists whenever there are issues which need trial and adjudication. Necessary criteria for establishing a prima facie case is that the plaintiff has to show that he has bonafidely raised a substantial question which needs to be adjudicated at the trial of suit.

20. As discussed supra, at this stage the plaintiffs have made out an arguable case. The documents produced by the

defendant No.2 show that his name was entered in the Municipal records pertaining to suit property on the basis of disputed Gift Deed dated 23.08.2022. It is argued by the learned counsel for the plaintiffs that the defendant No.2 by taking undue advantage of Municipal records entered in his name trying to alienate the suit property in favour of third parties. It is further argued that until the suit is decided on merits, the status-quo in respect of the suit property is to be maintained.

21. The grant of temporary injunction by the court is to preserve the state of things which were in existence as on the date of suit till the final adjudication of the rights of the parties. The defendant No.2 in his counter affidavits and at paragraph No.8 of the written statement admitted that the plaintiffs are residing in the suit property and collecting rents from the tenants. It is also admitted by him that the defendant

No.1 has not handed over possession of the property to him. The defendant No.2 has not produced any acceptable material before this court at this stage to establish that the defendant No.1 has sufficient independent source of income to purchase the property in dispute and construct a building therein. There is nothing on record at this stage to disbelieve the case of the plaintiffs. Considering the overall aspects of this case, this court is of the view that the plaintiffs have made out a substantial question to be tried in this case. Hence, this Court answers the point No.1 in the affirmative.

22. **Point No.(2) and (3):** The court should also satisfy that refusal to grant injunction would result in irreparable injury to the party seeking relief and he needs to be protected from the consequences of apprehended injury. The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that injury

must be a material one, which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exists no certain pecuniary standard for measuring damages.

23. The materials on record disclose that the municipal records pertaining to the suit property are mutated in the name of defendant No.2. The plaintiffs have seriously disputed the validity of Gift Deed dated 23.08.2022 executed by defendant No.1. Under the circumstances, at this stage, the argument of the learned counsel for the plaintiffs that in the absence of an order of temporary injunction the defendant No.2 may alienate or encumber the suit property before disposal of this suit on merits appears to be probable.

24. The admissions in the pleadings of the defendant No.2 and the notice dated 04.11.2022 issued by the counsel for the

defendant No.2 to the plaintiff No.1 establish at this stage that the plaintiffs are in possession of the suit property. Under the above circumstances, there are no valid grounds to refuse the grant of interim order by this court. The balance of convenience also lies in favour of the plaintiffs for the discussions made above. The irreparable loss and injury would certainly be caused to the plaintiffs in the event the temporary injunction is refused. To avoid such things, grant of temporary injunction as prayed in I.A.No.I and IV in favour of the plaintiffs is allowed. Hence, this court holds these points in the affirmative.

25. **Point No.(4):** In view of the above findings, this court proceeds to pass the following :-

**:- ORDER :-**

The I.A.No.I and IV filed by the plaintiffs under Order XXXIX Rule 1 and 2 r/w Sec.151 of C.P.C. are hereby allowed.

The defendant No.2, his men, agents and all those persons claiming through or under him are hereby restrained by an order of temporary injunction from alienating or encumbering the suit schedule property or interfering with peaceful possession of the plaintiffs over the said property in any manner till disposal of the suit.

(Dictated to the stenographer directly on computer, typed by her, print out corrected and then pronounced in the open court, on this, **the 30<sup>th</sup> day of January, 2023**)

(Shrikanta N.A.)  
II Addl. Senior Civil Judge & J.M.F.C.,  
Anekal.

