

KAKB210000422023



**IN THE COURT OF SENIOR CIVIL JUDGE AT ALAND,
KALABURAGI DISTRICT.**

:PRESENT:

SRI. S.M. ARUTAGI

B.com. LLB., (Spl)

SENIOR CIVIL JUDGE, ALAND.

O.S.No.13/2023

DATED THIS THE 01st DAY OF DECEMBER 2023

Plaintiffs: Vijaykumar S/o Dhondiba Roopnur
& another,

V/s

Defendants: Rajendra S/o Ramchandra Roopnur
& others,

PARTIES TO I.A.NO.I

Applicants/ 1. Vijaykumar,
Plaintiffs S/o Dhondiba Roopnur,



Age: 38 Years,
Occ: Agriculture,
R/o Dharmwadi (Kadaganchi),
Tq. Aland.

2. Kalyani,
S/o Dhondiba Roopnur,
Age: 32 Years,
Occ: Agriculture,
R/o Dharmwadi (Kadaganchi),
Tq. Aland,

(By Sri. B.A. Deshpande, Advocate)

Vs.

**Opponent/
Defendant-1** Rajendra,
S/o Ramachandra Roopnur,
Age: 41 Years,
Occ: Agriculture,
R/o Dharmwadi (Kadaganchi),
Tq. Aland,

(D-1 by Sri. P.N. Shah, Advocate)



ORDER ON IA NO.I FILED U/O XXXIX
RULE 1 & 2 OF CPC.

This is an application filed by the plaintiffs U/o., XXXIX Rule 1 and 2 of CPC, seeking ad-interim temporary injunction against the defendant No.1 restraining him from alienating or transferring the suit property in any manner till the disposal of this suit.

2. In the affidavit of plaintiff No.1 annexed to the application, it is stated that the defendant No.2 is genetic father of plaintiffs and defendant No.3. The defendant No.1 is younger brother of defendant No.2. The defendants are not the members of the joint Hindu family and the mother of the plaintiffs is still surviving and there is no partition in between the plaintiffs and the defendant No.2. The plaintiffs and defendant No.3 are



issues of defendant No.2 and they are co-parcener and members of Hindu undivided joint family. It is further averred that all the suit properties are ancestral property of defendant No.2 and earlier, the lands were standing in the name of father of defendant No.2 Ramachandra. By virtue of mutation No.16 dated 10-10-1982, the name of the defendant No.2 has been mutated in the ROR in Sy.No.100/2-2 measuring 03 Acres 16 Guntas.

3. It is further averred that the suit properties are ancestral properties and defendant No.2 being father of the plaintiffs and he has no right to gift the properties to anybody without consent of the co-parcener. Now a days, the defendant No.2 become master of voices and he is not at all acting in the interest of joint family rather now a days, he has developed peculiar hostile attitude



towards the plaintiffs and also the defendant No.2 has become idle in hands of defendant No.1 and he is dancing to the tune of defendant No.1 and as a result of this collusion, the defendant No.1 and 2 colluding with each other, created registered gift deeds on 17-02-2022 with respect to the suit schedule properties. The said gift deeds are not binding upon the plaintiffs and without their knowledge and behind back, the said gift deeds are executed. The plaintiffs requested the defendant No.1 and 2 to cancel the gift deeds and hand over the possession, but they did not heed the request made by them. Hence, they constrained to file the present application. It is further averred that they have made prima-facie case and balance of convenience tilt in their favour. If the application is not allowed, the they will put



to great and irreparable loss. Hence, sought for allow the application.

4. On service of summons, the defendant No.2 and 3 remained absent before this court and hence, they were placed exparte. The defendant No.1 appeared through his counsel and filed detailed written statement. It is admitted the relationship between himself and plaintiffs and other defendants. It is admitted that the mother of the plaintiff is still alive. It is contended that there is no partition at all in between the plaintiffs and defendant No.1 to 3. The family of the plaintiffs and Rajendra, Datta, Dhondiba, Vijayakumar, Kalayni and Siddamma is joint Hindu family and they are all co-parceners and they are in joint possession and enjoyment of the suit property. It is also admitted that the suit



schedule properties are joint family properties of family of Roopnoor and ancestor of the family of Ramchandra S/o Tulaja Roopnoor.

5. It is further contended that the defendant No.1 has filed the suit in OS No.76/2023 before the court for the relief of partition and separate possession and therefore, the said suit being a comprehensive suit and this suit may be clubbed with the said suit. It is contended that there is no partition in the family properties in the life time of Ramachandra even though after the death till the date. It is clearly admitted that the suit properties are ancestral properties left behind by Ramchandra and the property stood in the name of defendant No.2 previously as karta of joint family. It is contended that the defendant No.2 had no right to gift



the property to the defendant No.1, but the defendant No.1 being a member of joint family of plaintiffs and defendants never asked the defendant No.2 to execute any gift deed and there is no partition in the family and property left behind by Ramchandra and the defendant No.1 surprised as to why the gift deeds executed by the defendant No.2 in his favour.

6. It is further contended that there is gift deeds are wrong and therefore, there is no question of conducting this case, because already this defendant has filed comprehensive suit for partition and separate possession of all the properties of the family. It is further contended that the defendant No.2 has not at all mortgaging the suit property nor trying to alienate the same. Even, it is further contended that the original



propositor Ramchandra died since 20 years leaving behind his wife Ratnabai and three sons by name Datta, Dhondiba, Rajendra and a daughter by name Siddamma and mother Ratnabai died about 16 years ago. After the death of Ramchandra, the property left behind him were inherited by all the heirs of Ramachandra as co-owners and co-parcenars and till today they are in joint possession and enjoyment of the same. Ramachandra and Ratnabai died intestate and no partition has been effected during the life time of Ramachandra and after his death. Therefore, the defendant No.2 has filed suit for partition. After the death of Ramachandra, Datta started acting as a manager of the joint family and at the mis guidance of Dhondiba, he is started mis managing the affairs of the joint family and made whimsical entries in the ROR. Moreover, the defendant No.2 himself



admits that the alleged gift deeds are not correct and defendant No.2 surprised as to why those gift deeds were executed in the name of defendant No.2. On these grounds, prayed for dismissal of the application filed by the plaintiffs with costs.

7. Heard arguments on both side.

8. On the basis of application and objection, the following points arise for my consideration:-

- 1) *Whether the plaintiffs have made out prima-facie case in order to seek T.I. against the defendant No.1?*
- 2) *Whether the plaintiffs prove that the balance of convenience tilt in their favour ?*
- 3) *To whom irreparable injury or loss will cause in allowing or rejecting the said application?*
- 4) *What order?*



9. My answers to the above points are as follows:-

Point No.1 : In the affirmative.

Point No.2 : In the affirmative.

Point No.3 : In favour of plaintiffs.

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

REASONS

10. **Point No. 1 & 2:** Both these points are interlinked and hence, taken together for common discussion.

11. It is pertinent to note that the plaintiffs have filed this suit for declaration declaring that the gift deed executed by the defendant No.2 in favour of defendant No.1 is null and void and not binding upon them and also for vacant possession of the suit schedule properties and other reliefs.



12. To the aid of main relief, the plaintiffs have filed this present application on IA No.I U/O., XXXIX Rule 1 and 2 of CPC, to issue ad-interim temporary injunction against the defendant No.1 restraining him from alienating the suit schedule property till disposal of this suit. The plaintiffs in order to substantiate their case, got produced certified copy of manual RTCs, computerized RTCs, certified copy of mutation, certified copies of gift deeds executed by defendant No.2 in favour of defendant No.1. According to the plaintiffs, the suit schedule properties are ancestral properties of defendant No.2 and without his knowledge, the defendant No.2 had executed the registered gift deeds in favour of defendant No.1 on 17-01-2022 with respect to the Sy.No.100/9 measuring 02 Acres and in Sy.No.100/2 measuring 01 Acre 16 Guntas, both are



situated at Aloor (B) village. Moreover, the said gift deeds are made behind back and without their knowledge and therefore, those gift deeds are not binding upon them and therefore, sought for declaration declaring that the above gift deeds are not binding upon them and also sought for recovery of possession of the suit schedule properties.

13. On the other hand, it is specific defense put-forth by the defendant No.1 that there is no partition in the family and property left by Ramachandra and even, the defendant No.1 surprised about why the gift deeds have been executed by the defendant No.2 in his favour. Moreover, the defendant No.1 already filed suit for partition and separate possession against the plaintiffs and defendant No.2 and 3 in OS No.76/2023 on the file of this court and even, the defendant No.1 not denied



the relationship of the parties to the suit and himself and admitted that there is no partition in the suit schedule properties in between himself and his family members and even, it is clearly admitted that the gift deeds executed by the defendant No.2 in his favour are wrong and he surprised about the execution of gift deeds in his favour. Moreover, he has taken contention that the plaintiffs and Rajendra, Datta, Dhondiba, Vijayakumar, Kalayni and Siddamma are joint Hindu family members and they are co-parcenars and they are joint possession and enjoyment of the suit properties along-with “A” schedule property shown in the written statement.

14. So, on meticulously perusal of admission of defendant No.1, he has not disputed the relationship of



the parties to the suit and the nature of the properties are ancestral. Moreover, he himself stated in his written statement that there is no partition in the suit schedule properties in between himself and his family members and even, he does not know as to why the defendant No.2 has made gift deed in his favour. So, the defendant No.1 has already filed suit for partition and separate possession in OS No.76/2023. Hence, the suit does not survive for consideration.

15. On meticulously perusal of the entire pleadings and documents and objection, the defendant No.1 has not disputed the relationship of the parties to the suit. Moreover, the suit schedule properties are stood in the name of defendant No.1 Rajendra S/o Ramachandra. The plaintiffs have sought for temporary



injunction against the defendant No.1 restraining him from alienating the suit properties to the third person and if this court has not granted any relief of injunction, then the plaintiffs will be put to great and irreparable loss. Moreover, the defendant No.1 has admitted about the gift deeds made in his favour are wrong and he has surprised about why those gift deeds executed in his favour. Even, it is not disputed that the plaintiffs are co-parcenars and joint family members. Considering the admission made by the defendant No.1, it is clear that if the properties are alienated during the pendency of the suit, it leads of multiplicity of proceedings and if the plaintiffs succeed in the suit, definitely, it will affect from getting their share in the suit schedule properties. On the other hand, if the plaintiffs failed, the defendants succeed, no irreparable loss or injury cause



to the defendants, except the delay which can be compensated adequately in terms of money. Therefore, I am of the considered opinion that the plaintiffs have made out prima-facie case and balance of convenience tilt in their favour. Accordingly, I answer **point No. 1 and 2 in the Affirmative.**

16. **Point No.3:** As per the above said reasons, if the temporary injunction is not granted in favour of the plaintiffs, definitely, they will be put to great and irreparable loss. Accordingly, I answer this **point No.3 in favour of the plaintiffs.**

17. **Point No.4:-** For the above said reasons, I proceed to pass the following;



ORDER

Interim application No.I filed by
the plaintiffs U/O., XXXIX Rule 1
and 2 of CPC, is hereby allowed.

Consequently, the temporary
injunction issued by this court dated
06-02-2023 is extended till the
disposal of this suit.

(Dictated to the Stenographer, transcribed by her,
then corrected by me and pronounced in the open
court on this the 01st day of December, 2023)

(S.M. ARUTAGI)
Senior Civil Judge,
Aland.

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