

KAKL510019982024



IN THE COURT OF I ADDL. CIVIL JUDGE AND
J.M.F.C.,
AT : K.G.F, KOLAR

Present:

Smt. Shemida.K, B.A.(Law), LL.B.,
1st Addl. Civil Judge and J.M.F.C,
KGF

Original Suit No.137/2024

Dated this the 16th day of October, 2024

Plaintiff : **Sri. D.Muniyappa,**
 S/o late Venkatappa,,
 Aged about 78 years,
 R/at # 4-106, Belkogilahalli,
 Shanthipuram,
 Chittor District,
 Andrapradesh.

(Rep. By Sri.P.R., Advocate)

V/s

Defendants : **1. Sri. Subramani.K.M,**
 S/o D.Muniyappa,
 Aged about 48 years,

2. Likitha.S,
 D/o Subramni,
 Aged about 18 years,
 Both are R/at: # 10, 1st Main,
 Madhura Nagar, Mudulapalya,
 Bengaluru,

(Rep. By Sri.K.N., Advocate)

IA No.I

APPLICANT : **Sri. D.Muniyappa,**
(Plaintiff)

V/s

OPPONENTS : **Sri. Subramani.K.M and**
another
(Defendants)

i. Provision under which the application is filed	Under Order 39 Rule 1 and 2 r/w Sec.151 of CPC filed by the plaintiff
ii. Relief sought for	Temporary injunction
iii. The date on which the application is filed	21.03.2024
iv. Number of the application	IA.No.I
v. The date on which the objections are filed by different opponents	02.08.2024
vi. The date on which the orders were passed on the said application	16.10.2024

∴ ORDER ON I.A. No.I :-

The plaintiff has filed I.A No.I under Order 39 Rule 1 and 2 r/w Sec.151 of CPC seeking an order of Temporary Injunction restraining the defendant No.2, her agents, servants, family members and such other persons claiming under her from transferring, conveying or alienating the schedule property, in any way to any one till disposal of the suit in the interest of justice and equity.

2. In the affidavit filed in support of the said application, the plaintiff stated that he has filed the suit against the defendants for the relief of declaration and other reliefs. Further stated that he is the owner of the suit-schedule property and he has married to one Smt.Kanthamma and in that wedlock he have three children. They are defendant No.1, Sri.Shankarappa who has demised on 08.10.2023 and Smt.Kanthamma. Further stated that he is in possession and enjoyment of the suit schedule property and he has availed loan from PLD Bank, Bangarpet by mortgaging the suit schedule property to them.

2(a). Further stated that due to old age he is physically and mentally weak. By taking undue advantage of the situation of him, the defendant No.1 who is his elder son has took him to Bangarpet stating that he will apply for medical benefits under Government schemes and obtained his signatures in blank papers as well as stamp papers. Further stated that later he has applied for RTC in respect of suit schedule property wherein he come to know the existence of name of defendant No.1 in the RTC extract of suit-schedule property. Further on enquiry he come to know that the defendant No.1 has mis-used his blank signed papers stating that he has executed Gift Deed in his favour. Further stated that he has not alienated the suit-schedule property with free will and knowledge and the defendant No.1 has not took his consent and created the said document.

2(b). Further stated that after knowing the above aspect the plaintiff has enquired the matter with defendant No.1 and requested him to cancel the alleged Gift Deed and same was refused by defendant No.1. Further the defendant No.1 has further executed Gift Deed in favour his daughter i.e., defendant No.2 on 06.02.2024 and denied the title of plaintiff. Further stated that the alleged two Gift Deeds dated 06.02.2024 and 06.02.2024 were fraudulently obtained by defendants and they are not binding upon the plaintiff. Now the plaintiff has come to know that the defendants are trying to alienate the suit-schedule property which will lead to multiplicity of proceedings. Hence the plaintiff has made out prima-facie case. The balance of convenience lies in favour of plaintiff. If an order of ad-interim injunction is not granted, he will be put to irreparable loss, injury and inconvenience, which shall not be compensated in any terms. On the basis of aforesaid grounds, the plaintiff seeks for allowing of the application by granting temporary injunction.

3. The defendant No.1 and 2 have appeared through their counsel and has filed their written statement along with memo by adopting the same as objection to I.A.No.I.

3(a). In the said objection the defendant No.1 and 2 contended that the suit of the plaintiff is not maintainable and admits the execution of Gift Deed by the plaintiff in favour of defendant No.1. Further contended that the said Gift Deed was executed by the plaintiff with his free will

and consent. Further contended that he has cleared the loan of plaintiff which he has taken from PLD Bank, Bangarpet. Before the said clearance, the property was kept for public sale and with great difficulty the Defendant No.1 has cleared the said loan and now the property is free from all encumbrances.

3(b). Further contended that after the clearance of said loan, the plaintiff willfully executed the Gift deed in favour of the defendant No.1 and accordingly defendant No.1 came into possession and enjoyment of the same. Further contended that the defendant No.1 is the lawful owner of the suit-schedule property. Further admits the execution of another Gift-Deed dated 07.02.2024 and contends that it was executed with the consent of plaintiff who is the grand father of defendant No.2. Further contended that the plaintiff is knowing all the above aspects and by hearing the words of the relatives to harass the defendants, the plaintiff has filed the false suit against them. By stating all these grounds, it is prayed for rejection of IA No.I.

4. I have heard the arguments of both the sides and perused the documents on record.

5. Having heard and on perusal of the materials on records, the following points that would arise for my consideration. :

- 1. Whether the plaintiff has made out prima-facie case?**

2. **Whether the balance of convenience lies in favour of plaintiff?**
3. **Whether the comparative hardship and injury caused to the plaintiff is more when compare the same to the defendants?**
4. **What order?**

6. **My findings on 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;

-: R E A S O N S :-

7. **Point No.1 : -** Admittedly the plaintiff has filed the present suit seeking the relief of declaration of title and cancellation of Gift-Deeds dated 21.01.2021 and 06.02.2024 and consequential reliefs with respect of suit schedule property against the defendants. Further the present application was filed along with plaint and my learned predecessor has granted exparte interim order and issued suit summons to defendant No.1 and 2. Meantime the defendants have appeared through their Advocate and filed written-statement along with adoption memo by adopting the said written-statement as objection to IA.No.I. Meantime the said interim order was extended till further

order. Later the counsel for plaintiff has pressed the present application.

8. During the time of argument the counsel for plaintiff vehemently submitted that, the plaintiff is the absolute owner of the suit-schedule property and he is senior citizen. By taking his ill health, the defendant No.1 who is his son has fraudulently executed Gift Deed without his consent and knowledge. Later the defendant No.1 executed another Gift-Deed in favour of his daughter i.e., defendant No.2. The plaintiff has not given any consent for the execution of said Gift-Deeds and due to the said documents. Now the defendant No.1 and 2 are trying to alienate the suit-schedule property. Hence prays to allow the application. Per contra the counsel for defendant No.1 and 2 contended that the said Gift-Deeds are registered documents and the plaintiff has voluntarily given the consent and now after hearing the words of the relatives is denying the same. Hence prays to reject the application.

9. On this background I have perused the record. It is admitted fact that there was execution of two Gift-Deeds dated 21.01.2021 and 06.02.2024 and also admits that the plaintiff has took the loan from Bank. Further to establish the contention the plaintiff has furnished the above said copies of Gift-Deeds along with mutation register extracts which shows that from the name of plaintiff the suit-schedule property changed in to the name of defendant No.1. Further the plaintiff has furnished RTC

extracts of suit-schedule property of the year 2019-20 which shows that it was standing in the name of plaintiff and he has mortgaged the same for loan before PLD Bank, Bangarpet. Further the present RTC of the suit-schedule property of the year 2023-24 is furnished by the plaintiff which shows the name of defendant No.1. Further photographs and CD also furnished.

10. In this case the relationship between the parties are not in dispute and the defendant No.1 is the son of plaintiff and defendant No.2 is the grand daughter of plaintiff. The contention of the defendants is that the said Gift-Deed dated 21.01.2021 was voluntarily executed by the plaintiff in favour of defendant No.1 which was strongly disputed by the plaintiff. In this regard the plaintiff took the contention that due to old age the plaintiff was physically and mentally weak and the defendant No.1 fraudulently executed the alleged Gift-Deed without his knowledge. The above aspects is related to merit of the case. Hence it can be considered in a full-fledged trial and not at this stage. It is pertinent to note that, the primary purpose of granting interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the Court are adjudicated.

11. In the case on hand, on the basis of the documents produced by the parties to the suit, at this juncture this Court to ascertain what are the fair chances of plaintiff succeeding in the suit after termination of

trial?. The plaintiff has placed sufficient materials before the Court that, there exist a triable issue and the determination of which requires a trial. Therefore as per the settled principles, when there exists a triable issue, it amounts to establishing of the prima-facie case. The materials placed before the Court discloses that earlier the suit-schedule property was standing in the name of plaintiff himself which shows the prima-facie ground. Hence I hereby answer **Point No.1 in the Affirmative.**

12. Point No.2 : - It is to be noted that the existence of the prima-facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the Court about the Court the second condition by showing that he/she will suffer irreparable injury if the injunction as prayed is not granted and there is no other remedy open to him by which he can protect herself/himself from the consequences of apprehended injury.

13. In this regard the Hon'ble Supreme Court in **AIR 1985 SC 330-ASSISTANT COLLECTOR OF CENTRAL EXCISE, CHANDAN NAGAR, WEST BENGAL V/s DUNLOP INDIA LTD. AND OTHERS**, it is held that *'once the existence of prima facie case is made out the Court should analyze the second condition i.e the irreparable injury. Only if the applicant would suffer irreparable injury if interim injunction is not granted then the injunction can be granted.'*

14. In the present case the defendant contended that the plaintiff has executed Gift-Deed dated 21.01.2021 under his free will and he has given consent for the same. Further contended that the suit-schedule property due to the alleged loan was kept for public sale, at that time with great difficulty he has cleared the loan amount but in this regard the defendants have not produced any single piece of document. Further the document produced by the plaintiff shows that now the suit-schedule property is standing in the name of defendant No.2. It is true that injunction order can't be granted against the true owner. But the prayer of plaintiff is restraining the defendant No.2 from further alienation which can be considered as it will lead to multiplicity of proceedings.

15. Further it is pertinent to note that the Hon'ble Supreme Court in **SHIV KUMAR CHADHA V/s MUNICIPAL COPORATION OF DELHI, 1993 (3) SCC 161**, it is held that '*Grant of injunction is 'exdebito Justitiae' i.e to meet the ends of justice.*' In view of ratio held in above said decisions and my discussions, I am of the considered opinion that, the plaintiff has establish the balance of convenience lies in favour of him. Further as stated supra the defendant except the defence not produced any corroborative evidence with respect of said defence. Hence I hereby answer **Point No.2 in the Affirmative.**

16. Point No.3 :- The third condition for granting interim injunction is that the balance of convenience must

be in favour of the applicant. In other words the counsel must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

17. In the present case the materials placed before the Court at this stage discloses that, the plaintiff was the owner of the suit-schedule property and now the said property is standing in the name of defendant No.2 after the execution of two Gift-Deeds which was strongly disputed by the plaintiff. Hence under the facts and circumstances of the present case, at this juncture the balance of convenience also falls in favour of the plaintiff, when compare the same to the defendants. Therefore whatever the contention taken by the defendants doesn't hold water under the facts and circumstances of the case as per the discussion made above and the same is required to be considered. Therefore by virtue of the aforesaid documents, this Court is of the opinion that, the plaintiff has made out sufficient grounds to consider his case. Moreover the interim-order granted earlier was extended till further order. Hence I hereby answer **Point No.3 in the Affirmative.**

18. Point No.4:- In view of my findings to the Point No. 1 to 3, I proceed to pass the following;

-: O R D E R :-

***The I.A.No.I filed by the plaintiff
U/Order 39 Rule 1 and 2 r/w Section 151
of C.P.C is hereby allowed.***

***The defendant No.2, her agents,
servants and others acting on her behalf
are hereby restrained from transferring,
conveying or alienating the suit-schedule
property in any manner whatsoever by
way of granting the interim order of
temporary injunction in respect of suit
schedule property till the disposal of this
suit.***

The parties shall bear their own cost.

(Dictated to the Stenographer directly on computer, revised and corrected by me then pronounced in the open court, this the **16th day of October, 2024**)

**(SHEMIDA. K)
I Addl.Civil Judge and J.M.F.C,
KGF**