

KAKL510002542021



IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC
AT K.G.F.

Dated this the 27th day of September 2021

:: PRESENT::

**KIRAN S.P., B.B.M., LL.B.,
II Addl. Civil Judge, K.G.F.**

OS No 52/2021

**Plaintiff : - Smt. Almelamma @ Almelu
Mangamma & another**

V/s.

Defendants :- Sri. M. Devraj

Cause Title On IA NO. I

- Applicant: -**
- 1. Smt. Alamelamma @ Alemulu Mangamma
W/O. Muniswamy,
Aged About 80 Years,**
 - 2. Sri. M.Venkatesh
S/O. Muniswamy,
Aged About 56 Years,
Both are R/at.no. 58, 2nd cross,
Muneshwara Block,
Malleshwara,
Bangalore North,
Bangalore.**

(By Sri. P.R , Advocate)

V/s.

Respondents:-

Sri. M.Devaraj,
S/O. Muniswamy
Aged About 58 Years,
R/at. no. 59, 2nd cross,
Kasthurba Nagar,
Muneshwara Block,
Malleshwara,
Bangalore North,
Bangalore.

(By Sri. K.V.P., Advocate)

Cause Title On IA NO. IV & V

Applicant: -

Sri. M.Devaraj,
S/O. Muniswamy
Aged About 58 Years,
R/at. no. 59, 2nd cross,
Kasthurba Nagar,
Muneshwara Block,
Malleshwara,
Bangalore North,
Bangalore.

(By Sri. K.V.P., Advocate)

V/s.

Respondents:-

- 1. Smt. Alamelamma @ Alemulu Mangamma**
W/O. Muniswamy,
Aged About 80 Years,
- 2. Sri. M.Venkatesh**
S/O. Muniswamy,
Aged About 56 Years,
Both are R/at.no. 58, 2nd cross,
Muneshwara Block,
Malleshwara,
Bangalore North,
Bangalore.

(By Sri. P.R , Advocate)

: COMMON ORDER ON IA NO.I, IV & V :

The plaintiffs have filed IA no.I U/O 39 Rule 1 to 3 R/W sec. 151 of CPC seeking temporary injunction, restraining the defendant, his servants, family members, agents and such other persons claiming under him from interfering or obstructing plaintiff's peaceful possession and enjoyment over the suit schedule properties by dispossessing them from the suit schedule properties or in any other way during the pendency of suit.

02. The defendant has filed IA no.4 U/O 39 Rule 1 & 2 R/W sec. 151 of CPC, seeking temporary injunction, restraining the plaintiffs, their agents, workers and others on their behalf from alienate 'A' and 'B' schedule properties in any manner during the pendency of suit.

03. The defendant has filed IA no. 5 U/O. 39 rule 1 and 2 R/w sec. 151 of CPC, seeking temporary injunction, restraining the plaintiffs, their agents, workers and others on their behalf from form sites in 'A' and 'B' schedule properties in any manner during the pendency of suit.

04. In the accompanying affidavit of IA no.1, it is stated by the plaintiff no.2 that, plaintiff no.1 is his mother and defendant is his elder brother and his mother was the absolute owner of suit schedule properties. Suit schedule 'A' property was purchased by the 1st plaintiff on 02-12-1959 under registered sale

deed and she is the absolute owner with alienable title over it exercising her such right she gifted the said property under gift deed dated 12-05-2011 to him. 'B' schedule property was the self acquired property of Sri. Varadappa i.e., father of 1st plaintiff and after his death the said property was devolved on their only daughter, the 1st plaintiff, who became absolute and exclusive owner of the same, exercising such right, she gifted the 'B' schedule property to him under registered gift deed dated 12-05-2011. The 1st plaintiff also gifted the 'C' schedule property to plaintiff no.2 under registered gift deed dated 12-05-2011 and he has duly accepted and he was in physical and actual possession over the suit schedule properties. The defendant has no right title interest over the suit schedule property, he is unnecessarily interfering with his possession and is proclaiming to dispossess him from the suit schedule property. On these grounds he prays to allow IA .

05. In the accompanying affidavits of IA no.4 and 5, it is stated by the defendant that he is contesting the suit by filing detailed written statement and also claimed counter claim and to effect partition among family members, the plaintiffs to change the nature of the properties and dispose the same to others to lead multiplicity of proceedings, on 02-07-2021 he came to KGF after knowing the attempt by the plaintiffs and visited the village where he came to know that the plaintiffs are rumoring that they will sell away 'A' and 'B'

schedule properties to others to see that he shall not claim anything. The plaintiffs taking advantage of lockdown and his absence doing all illegal attempts and he also informed in the village that the properties are under dispute not to purchase any body, the plaintiffs secretly attempting to sell the 'A' and 'B' schedule properties during the pendency of suit and to avoid and to give his share. If the plaintiffs succeeded his right will be defeated and it will lead multiplicity of proceedings than the plaintiffs will be withdraw the case. On these grounds he prays for allow IA 4 and 5.

06. Heard both side.

07. Points that would arise for final determination of these applications are as follows:

Point No.1: Whether the plaintiffs have made out prima-facie case for grant of temporary Injunction as sought in IA no.1?

Point No.2: Whether the balance of convenience lies in favour of the plaintiffs?

Point No.3: Whether the Plaintiffs will be put to irreparable loss and hardship, if IA No. 3 is not allowed?

Point No.4: *Whether the defendant has made out a prima facie case for grant of temporary injunction as sought in IA no.4 and 5?*

Point No.5: *Whether the balance of convenience lies in favour of the Defendant?*

Point No.6: *Whether the Defendant will be put to irreparable loss and hardship, if IA No. 4 and 5 are not allowed?*

Point No.7 : *What Order?*

08. The findings on the above points are as follows;

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

Point No.4: In the Negative

Point No.5: In the Negative

Point No.6: In the Negative

Point No.7: As per final order for the following;

R E A S O N S

09. **Point no 1 and 4:** These points are interlinked each other. Hence they have taken together for common discussion in order to avoid repetition of fact and circumstances. There is no dispute that plaintiff no.1 is

the mother of plaintiff no.2 and defendant and they are the wife and sons of one Sri Muniswamy. This is a suit for the relief of permanent injunction against defendant with respect to suit schedule properties item no. 'A' to 'C'. On service of suit summons to defendant, he has appeared through his counsel and filed written statement by way of counter claim for the relief of partition over the suit schedule properties. The definite case of the plaintiffs is that the 'A' schedule property was purchased on 02-12-1959 by 1st Plaintiff under registered sale deed. The 'B' schedule property was the self acquired property of Sri. Varadappa and after his death and death of his wife Smt. Muniyamma, the said property is devolved on their only daughter, the 1st plaintiff who became the absolute and exclusive owner of the same, exercising such right, she gifted the 'A' and 'B' schedule property to her son, the 2nd plaintiff under registered gift deed dated 12-05-2011. The 1st plaintiff also gifted the schedule 'C' property to 2nd plaintiff under registered gift deed dated 12-05-2011. In order to prove such fact the plaintiffs have relied on certified copy of gift deed dated 12-05-2011 in respect of suit schedule 'A' 'B' 'C' properties . On perusal of said gift deed dated 12-05-2011, it shows that plaintiff no.1 has executed 3 different gift deed on same day i.e., on 12-05-2011 with respect to 'A' 'B' 'C' schedule properties in favour of plaintiff no.2. By virtue of gift deed the revenue records are standing in the name of plaintiff no.2 with respect to item no. 'A' 'B' 'C' schedule properties.

10. As stated above, the defendant has sought for relief of partition over the suit schedule properties. It is the contention of the defendant that 2nd plaintiff is doing criminal activities in grabbing money and also property of the family. The 2nd plaintiff is also forged the signature of defendant and 1st plaintiff and availed loan in the Bangalore city co-operative bank limited, on the security of family property to an extent of Rs. 15,00,000/- and swallowed the said document. The said society has published in general public advertisement that the amount availed by the 2nd plaintiff not settled and they are going to sell the mortgage property. The property belong to the family of the plaintiffs and the defendant, the 1st plaintiff without the knowledge and consent of this defendant and plaintiff mortgaged the above property to the said bank by forging the signature of this defendant he approached the said bank and collected information. The 2nd plaintiff is also done same thing in this case without disclosing the document name to the 1st plaintiff and got the document in his favour perpecting to be registered gift deed and kept the said document with him for all these years. The defendant after came to know the forged of the documents by the 2nd plaintiff in the bank he filed a suit against the plaintiffs before 22nd city civil judge, Mayo hall bangalore, in OS No. 26231/2017 and pleaded all the facts about the forgery of the documents by the 2nd plaintiff and loan is not binding on this defendant and

given complaint to the concerned police to register a case against the 2nd plaintiff for forgery of signature of this defendant, and the 2nd defendant committed offence punishable U/sec. 420,465,471, of IPC under impersonation. The 2nd plaintiff created a false story against the defendant and obtained an ex-parte order of injunction on false grounds. The plaintiff interim application is not maintainable for the reason there is several prayers in one application and also the main relief in the suit and in the interim application are one and the same.

11. In order to prove such fact the defendant has not produced single piece of document. Materials available on record shows that the defendant herein has filed OS No. 26231/2017 on the file of Addl. City civil judge, may-hall at Bangalore for the relief of partition against plaintiffs herein and the branch manager, the Bangalore city cooperative bank limited, Bangalore. Though the defendant has sought for the relief of partition in said case, he has again sought for the partition by way of counter claim in the above suit. On perusal of xerox copy of plaint of OS No. 26231/2017, it shows that the defendant has not impleaded the suit schedule properties in the said suit. If the suit schedule properties are the joint family properties of plaintiffs and defendant, nothing could be prevented the defendant to implead the suit schedule properties in the said OS no 26231/2017. This is a suit for permanent injunction with

respect to suit schedule properties. The plaintiff has claimed the suit schedule properties on the basis of gift deed executed by the plaintiff no.1 in favour of plaintiff no.2. By considering the overall facts and circumstances of the case, it shows that the plaintiffs have made out prima facie case with respect to suit schedule properties. The defendant has filed comprehensive relief of partition by way of counter claim with respect to suit schedule properties. If the defendant succeeds in the counter claim he will get back the possession in accordance with law. Hence materials available on record shows that defendant has failed to make out prima facie case with respect to suit schedule properties. Accordingly Point no.1 is answered in the Affirmative. Point no.4 is answered in the Negative.

12. **Point 2 & 3:** These points are interlinked each other. Hence they have taken together for common discussion in order to avoid fact and circumstances. The plaintiffs have established prima faice case to proceed with the case. It is the apprehension of the plaintiffs that the defendant making attempt to interefere in the suit schedule properties. In such circumstances, if the defendant is interfering with the possession of plaintiff, much inconvenience will be caused to plaintiff in this case. By considering the facts and circumstances of the case, the plaintiffs have established that balance of convenience lies in their favour and they will be put to more hardship and loss if the temporary injunction is

not granted. Accordingly point no.2 and 3 are answered in the Affirmative.

13. **Point no.5 and 6:** The defendant has to failed to establish the prima facie case. Hence, question of considering the aspect of balance of convenience and irreparable loss does not arise for consideration . Accordingly Point no5 and 6 are answered in the Negative.

14. **Point No.7:** For the foregoing reasons I proceed to pass the following;

ORDER

IA no 1 filed by the plaintiffs U/O 39 Rule 1 and 2 of CPC is hereby by allowed on cost of Rs 100/- .

The defendant, his servant, family members,, agents and such other persons claiming under him are hereby restrained from interfering or obstructing the plaintiffs peaceful possession and enjoyment over the suit schedule properties by dispossessing them from the suit schedule property or in any other way till disposal of suit.

IA no.4 and 5 filed by the defendant U/O 39 rule 1 and 2 R/W sec 151 of CPC is here by dismissed .

(Dictated to the stenographer, transcribed by her, corrected and then pronounced in the open Court on this the 27th day of September 2021)

**Sd/-
(KIRAN S.P)**

II Addl. Civil Judge & JMFC,KGF

