

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
AT SRINIVASPURA.**

Dated this **20th** day of **June 2020**

Present : H.R. Devaraju, B.A.LL.B.,
Prl.Civil Judge and J.M.F.C.,
Srinivaspura.

O.S.No.21/2018

Plaintiff/s:

Smt. Madivala Channamma
W/o Late Madivala Krishnappa,
Aged about 75 years,

R/o Koolagurki Village,
Ronuru Hobli, Srinivaspura Taluk.

Present Address:

Adavichambakuru Village,
Ronuru Hobli, Srinivaspura Taluk

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

-V/s-

Defendant/s:

- 1. Sri. Venkatappa S/o Nagappa,**
Aged about 75 years,

Defendant No.1

R/o Byadarahalli Village,
Byrakuru Hobli,Mulbagal Taluk,
Kolar District.

- 2. Sri. Gangulappa S/o Venkatappa,**
Aged about 32 years,

Defendant No.2

R/o Muddepalli Village,
Nelavanki Hobli, Srinivaspura Taluk.

(Defts. by Sri. K.V.K., Advocate.)

I.A.NO.1**Applicant/Plaintiff :**

Smt. Madivala Channamma
W/o Late Madivala Krishnappa.

-V/s-

Opponents/Defendants :

Sri. Venkatappa S/o Nagappa and another.

ORDERS ON I.A.NO.1

This is an application filed by the plaintiff/applicant Under Order 39 Rule 1 and 2 R/w Sec. 151 of C.P.C seeking for an Order of temporary injunction against the defendants restraining them from alienating the suit schedule property to the 3rd person or create charge over the below mentioned suit schedule property by way of gift, sale, mortgage or in any other mode to anybody till the pending disposal of the present suit.

SCHEDULE

Wet land measuring 2-00 acres with 0.6 guntas 'A' karab and 0.3 guntas 'B' karab in Sy.No.38 of Kanampalli Village, Nelavanki Hobli, Srinivaspura Taluk, bounded on East by: Rajakaluve, West by: Road, North by: Kere katte and Road and South by: Land of Venkatappa and others.

2. Case of the plaintiff in brief is as under:

The plaintiff in her affidavit accompanying to this I.A has stated that she is an absolute owner in peaceful possession and enjoyment of the suit schedule property. The 1st defendant had acquired the suit schedule property under Darakasth Grant made by the Government of Karnataka vide No.RR48 DR420/1967-68. After that the 1st defendant had sold the property to Smt. Banubiyamma W/o Shaik Imam Sabi residing at Pulagurakote Village, Nelavanki Hobli, Srinivaspura Taluk through registered sale deed dated 18.05.1972 for valuable consideration and he had delivered the physical possession of the suit schedule property to the Smt. Banubiyamma.

3. The plaintiff further submits that she has acquired the suit schedule property through registered sale deed dated 15.07.1983 from Smt. Banubiyamma, who is the purchaser of the suit schedule property from the 1st defendant. Further she has stated that as on date of registration of sale deed vendor of the plaintiff Smt. Banubiyamma had delivered the physical possession of the suit schedule property to her.

4. The plaintiff further submits that she has not applied for change of katha of the suit schedule property into her name due to her illiteracy. Further she stated that her vendor also had not applied for change of katha into her name. Hence, katha of the suit schedule property still stands in the name of the 1st defendant. But, 1st defendant neither in possession nor have any rights over the suit schedule property, but, to grab the suit schedule property he has executed the registered gift deed dated 08.12.2017 in favour of 2nd defendant on the basis of continuation of his name on revenue records. She further submits that she has preferred an appeal before Assistant Commissioner, Kolar against the 1st defendant to cancellation of the katha of the 1st defendant and same is pending for disposal. But, without rights he has executed gift deed in favour of 2nd defendant as he is the owner of the suit schedule property.

5. The plaintiff further submits the defendants colluded with each other and trying to alienate the suit schedule property to the 3rd person to deprive the rights of the plaintiff over the suit schedule property. The plaintiff is having her absolute rights over the suit schedule property

and they denied her rights over the suit schedule property. Hence, she has filed present suit for declaration of her title over the suit schedule property along with this application.

6. The plaintiff further submits that prima facie case and balance of convenience lies in her favour. If court has not granted temporary injunction order against the defendants, it would cause hardship to her. Therefore, prays for allow the application.

7. On the other hand the defendants have filed memo and prays for adopt the contents of the written statement filed by them as objection to the present I.A.No.1 filed by the plaintiff U/o 39 Rule 1 and 2 of CPC.

8. The defendants contended that application filed by the plaintiff is not maintainable either in law or facts. Further they contended that 1st defendant has acquired the suit schedule property through Darakasth Grant made by the Government in vide No.RR.48 DR.420/1967-68. On the basis of the grant made by the Government, katha of the suit schedule property got mutated into his name as owner of the suit schedule property. Therefore, he has executed the gift deed in favour of 2nd defendant on 08.12.2017 with

love and affection. From the date of gift deed 2nd defendant is in peaceful possession of the suit schedule property as absolute owner. The defendants have further submitted that plaintiff is utter stranger to the suit schedule property and she is not in possession of the suit schedule property. The plaintiff has created the suit documents for the purpose of this suit. Therefore, she is not entitled for any relief as claimed by her. *Prima facie* case is not made out by the plaintiff and balance of convenience, irreparable injury and hardship causes to the defendants. Therefore, prays for dismiss the application filed by the plaintiff with exemplary cost.

9. Heard both sides and perused the documents placed on record.

10. The following points arise for the consideration of this Court;

- 1. Whether the plaintiff/applicant has made out *prima-facie* case?**
- 2. Whether the balance of convenience lies in favour of the plaintiff?**
- 3. Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction is not granted, as prayed?**

4. What Order?

11. My 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 : **As per the final order**
for the following;

REASONS

12. Point No.1: It is the case of the plaintiff that, her vendor Smt. Banubiyamma had purchased the suit schedule property from the 1st defendant through registered sale deed dated 18.05.1972. Thereafter the plaintiff has purchased the suit schedule property from Smt. Banubiyamma through registered sale deed dated 15.07.1983. But, katha of the suit schedule property has not been mutated into the name of the plaintiff as per registered sale deed. Katha of the suit schedule property still stands in the name 1st defendant. Hence, she has filed revenue appeal before Assistant Commissioner, Kolar for cancellation of the katha of the 1st defendant with respect to suit schedule property. It is further case of the plaintiff that in between 1st defendant has executed the gift deed in

favour of the 2nd defendant on 08.12.2017 without having any rights over the suit schedule property. Hence, she has filed present suit for declaration of her title over the suit schedule property along with this application.

13. The learned counsel for the plaintiff has argued that on 08.12.2017 1st defendant had no title, interest, ownership over the suit schedule property, without having any rights he has executed gift deed in favour of 2nd defendant on the basis of revenue entry to grab the suit schedule property of the plaintiff. Further he has argued that defendants have tried to alienate the suit schedule property to the 3rd person. If defendants alienate the schedule property to 3rd person, it creates multiplicity of proceedings and much hardship would causes to the plaintiff. Therefore, prays for allow the application.

14. On the other hand defendants have contended that 1st defendant is the absolute owner of the suit schedule property and he had acquired the said property by way of grant made by the Government as per order No.RR48 DR420/1967-68. The 1st defendant is having every rights to execute the gift deed in favour of 2nd

defendant herein. The plaintiff has filed false suit against them. Hence, prays for dismissal of the application.

15. The plaintiff in support of her case she has furnished certified copy of the registered sale deed dated 15.07.1983. On perusal of the said document it reveals that plaintiff has purchased the suit schedule property from Smt. Banubiyamma W/o Shaik Imam Sabi. Further she has furnished sale deed dated 18.05.1972. On perusal of the certified copy of the registered sale deed it prima facie shows that 1st defendant has sold the suit schedule property in favour of vendor of the plaintiff by name Smt. Banubiyamma for valuable consideration. Further she has furnished recent RTC extracts of the suit schedule property. It shows that still katha stands in the name of 1st defendant herein.

16. On the other hand at this stage defendants for support of their contention have not produced any documents. The documents furnished by the plaintiff are prima facie show that 1st defendant had sold the suit schedule property to the vendor of the plaintiff by name Smt. Banubiyamma on 18.05.1972. But, katha of the suit

schedule property had not mutated as per the registered sale deed dated 18.05.1972 into the name of Smt. Banubiyamma. It is well settled that mere entry in the revenue records have not created any rights over the suit schedule property. As per the registered sale deed furnished by the plaintiff it prima facie shows that plaintiff has purchased the suit schedule property through registered sale deed dated 15.08.1983. she has purchase the suit schedule property from Smt. Banubiyamma for valuable consideration. It is pertinent to note that on the other hand defendants have not stated anything about registered sale deed dated 18.05.1972 and they have maintained silence towards registered sale deed dated 18.05.1972. The defendants have contended that plaintiff has created that documents to grab the suit schedule property. On perusal of the documents furnished by the plaintiff, said documents are registered documents. Under such circumstances, question is whether plaintiff has created the suit documents or not is determined in trial with cogent evidence. Therefore, I am of the opinion that

plaintiff has made out prima facie case. Accordingly, I hold point No.1 in the **Affirmative**.

17. Point Nos. 2 and 3: These points are interlinked with each other to avoid repetition of facts they are taken together for common discussion.

18. As already discussed *supra* plaintiff has furnished recent RTC extract of the suit schedule property and katha of the suit schedule property stands in the name of the 1st defendant. If the defendants alienate the suit schedule property to the 3rd person it creates multiplicity of proceedings and hardship causes to the plaintiff. It is relevant to note here decision reported in **ILR 2004 KAR 4076** (between **Fakirasab V/s Syedusad and others**) wherein our Hon'ble High Court of Karnataka at Para No.9 has held that;

“It is well settled that while considering an application for grant of temporary injunction, the right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of the suit,

succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status quo so that it would be available to the plaintiff if he ultimately succeeds in the suit”.

19. As per ratio laid down in the above said decision the plaintiff would not be put irreparable loss and his rights over the schedule property should be protected. In the instant case the plaintiff has purchased the suit schedule property from one Smt. Banubiyamma for valuable consideration under registered sale deed. But, defendant contended that plaintiff has created the suit documents to filed present suit. Contention of the defendants is subject matter of trial. Because, plaintiff has furnished registered documents before this court. Therefore, her rights over the suit schedule property should be protected. If defendants alienate the suit schedule property it creates multiplicity of proceeding between the parties. If temporary injunction is not granted there are very chances of changes the nature of the suit schedule property. Moreover, if defendants alienate the suit schedule property to the 3rd person it causes hardship and

inconvenience to the plaintiff. Therefore, I am of the opinion that if the order of temporary injunction is not granted it will cause irreparable loss, injury to the plaintiff. If injunction is granted no hardship and injury causes to the defendant. Accordingly, I hold point Nos. 2 and 3 in the **Affirmative.**

20. Point No.4: In view of my above discussions, I proceed to pass the following;

ORDER

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

Consequently the defendants are hereby temporarily restrain from alienate the suit schedule property to the 3rd person or creating charge over the suit schedule property by way of gift, sale, mortgage or in any manner till pending disposal of the suit.

(Dictated to the Stenographer directly on the computer, typed by him, corrected and then pronounced by me, this the **20th** day of **June 2020**)

(H.R. Devaraju)
Prl.Civil Judge and J.M.F.C.,
Srinivaspur.