

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

Dated this 15th day of June 2020

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

O.S.No.69/2019

PLAINTIFF/S:

Sri. P. Ramappa Naidu S/o Late Pogaku Ramaiah,
Aged about 92 years,

R/o Rayalpad Village & Post,
Rayalpad Hobli, Srinivaspura Taluk.

Present Address:

C/o Sri. P.R. Ramadas Naidu,
No.446, 7th Main, 1st Block,
Jayanagar, Bengaluru – 560011.

(By Sri. K.R.M., Advocate)

-V/s-

DEFENDANT/S:

Smt. P. Radhamma W/o K.V. Venkatanarasu Nayaka
@ Venkatanarasu Naidu,
Aged about 59 years,

R/o Rayalpad Village & Post,
Rayalpad Hobli, Srinivaspura Taluk.

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

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

Sri. P. Ramappa Naidu S/o Late Pogaku Ramaiah.

-V/s-

Opponents/Defendants :

Smt. P. Radhamma W/o K.V. Venkatanarasu Nayaka
@ Venkatanarasu Naidu.

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 defendant and her agents, servants or anybody on her behalf etc., restraining them from alienating or creating the charge over the below mentioned suit schedule property in any manner till the pending disposal of the present suit.

SCHEDULE

All that the piece and parcel of the land bearing old Sy.No.269, New Sy.No.432, measuring of 3-18 acres, situated at Rayalpad Village, Rayalpad Hobli, Srinivaspura Taluk, bounded on East by: Kattu Kaluve, West by: land of Venkataraniyamma, North by: Land of B.R. Narayanashetty and South by: Madarankipalli Gadi and Road leading to dry land.

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

The plaintiff in his affidavit accompanying to this I.A has stated that suit schedule property is the self acquired property of him. The Government of Karnataka has granted the suit schedule property in favour of the plaintiff vide order NO.LND/RUO(RPD)12/1998-99 dated 05.11.1998 with non alienation clause for a period of 15 years. The Tahasildar Srinivaspura has also issued grant certificate in favour of the plaintiff on 21.11.1998 and katha of the suit schedule property got mutated into his name as per MR.No.306-20/1998-99.

3. The plaintiff further submits that defendant by playing fraud on him has created Will dated 21.05.2011 as executed by him in favour of defendant. After knowing the fraudulent act of the defendant plaintiff has been canceled the alleged Will on 28.04.2018 and the same has been registered at Sub Registrar Office, Srinivaspura.

4. The plaintiff further submits that during the year 2019 he came to know that katha of the suit schedule property got mutated into the name of the plaintiff on the basis of gift deed dated 10.11.2019 as executed by the

plaintiff. But, plaintiff never executed any gift deed in favour of the defendant in respect of the suit schedule property. The plaintiff further submits that the defendant fraudulently obtained the signatures of the gift plaintiff and she has created the gift deed without disclosing any true facts to him, taking undue advantage of the plaintiff's old age, innocence the defendant has created the gift deed by misrepresenting the facts with an intention to grab the valuable property of the plaintiff. The plaintiff had no intention to execute the gift deed and he has no love and affection towards defendant herein. If defendant alienate the suit schedule property it creates multiplicity of proceedings and it cause irreparable loss and injury to him. Therefore, he has filed present application.

5. The plaintiff further submits the defendant is 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 further submits that prima facie case and balance of convenience lies in his favour. If court has not granted temporary injunction order against

the defendant, it would cause hardship to him. Therefore, prays for the allow the application.

6. On the other hand the defendant has filed her detailed objections and contended that application filed by the plaintiff is not maintainable either in law or facts.

7. The defendant further contended that the plaintiff is not in possession of the suit schedule property and documents produced by him are not helpful to him. Further she contended that suit schedule property is the self acquired property of her. The plaintiff with love and affection has executed the registered gift deed in favour of the plaintiff and said gift has been accepted by defendant herein. From the date of the said gift deed defendant is in peaceful possession in the suit schedule property and in pursuance of the gift deed all the revenue documents got mutated into the name of the defendant. The plaintiff has no rights over the suit schedule property. The plaintiff fails to prove prima facie case, balance of convenience. If injunction is granted much hardship will cause to her. Therefore, prays for dismissal of the application with exemplary cost.

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

9. 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?

10. 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

11. Point No.1 to 3: These three points are interlinked with each other to avoid repetition of facts they are taken together for common discussion.

12. It is the case of the plaintiff that, the defendant has created the gift deed dated 30.03.2015 as executed by the plaintiff. The plaintiff had no intention to execute the gift deed in favour of defendant, she has created the gift deed by playing fraud on him. Hence, he has filed present suit for cancellation of registered gift deed dated 30.03.2015.

13. Counsel for the plaintiff has argued that if defendant alienate the suit schedule property to the 3rd person, it creates multiplicity of proceedings and if this application is not allowed much hardship and irreparable loss causes to the plaintiff. Hence, prays for allow the application.

14. For support of his contention he has furnished registered gift deed dated 30.03.2015, Will dated 21.05.2011, and cancellation of Will dated 28.04.2018 and RTC extracts of the suit schedule property.

15. On perusal of the documents submitted by the plaintiff prima facie shows that the plaintiff has executed the gift deed in favour of the defendant on 30.03.2015.

16. Once again I repeat that it is the contention of the plaintiff that defendant has created the gift deed dated 30.03.2015 as executed by the plaintiff to grab the valuable property of him.

17. On the other hand defendant contended that the plaintiff voluntarily executed the gift deed dated 30.03.2015 with love and affection. The defendant has not created any Will or gift deed as executed by the plaintiff. From the date of registration of gift deed she is in possession of the suit schedule property. If injunction is granted much hardship would causes to her. Hence, prays for dismissal of the application.

18. The plaintiff submits that if defendant alienates the suit schedule property it creates multiplicity of proceedings and hardship causes to him. The question whether gift deed is genuine or not is subject matter of trial. The plaintiff has furnished recent RTC extracts of the suit schedule property. On perusal of the recent RTC

extract katha of the suit schedule property stands in the name of the defendant. Therefore, I am of the opinion that there are every chances that the defendant may sell the suit schedule property to different person and in this manner the rights of 3rd person to come into play. In order to avoid the multiplicity of the suit. It is just and necessary to grant temporary injunction to restrain the defendant from alienate the suit schedule property. If defendant alienate the suit schedule property the plaintiff will be put to great hardship and irreparable injury.

19. Once again I repeat that plaintiff at this stage he proves prima facie case and if injunction is not granted much hardship will causes to him. It is pertinent note that counsel for the defendant has argued that the defendant had already obtained loan from the bank with respect to suit schedule property, for support of his argument he has furnished statement of account issued by Canara Bank. On perusal of the said statement of account the defendant has obtained loan of Rs. 96,000/- from the Canara Bank under Kissan Credit Card Scheme on 15.09.2016. If defendant will create charge over the suit schedule property except

above said loan it creates hardship to the plaintiff. Therefore, it is just and necessary to grant temporary injunction against the defendant to avoid future transaction or alienation in respect of the suit schedule property. Accordingly, I hold Point No.1 to 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 defendant, her agent, servant, representatives or any body on her behalf are hereby temporarily restrain from alienating or create the charge over the suit schedule property in any other mode to anybody from the date of this order 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 **15th** day of **June 2020**)

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