

KAMS210024092024



**IN THE COURT OF THE IInd ADDITIONAL CIVIL JUDGE
AND J.M.F.C., AT HEGGADADEVANAKOTE.**

**PRESENT: SUSHMA.M. B.A., LL.B.,
IInd Addl.Civil Judge & J.M.F.C.,
Heggadadevanakote.**

Dated this the 19th day of FEBRUARY 2025

O.S.No.316/2024

Plaintiff: Smt.Sowbagya,
W/o Kempasiddaiah,
Aged about 55 years,
R/o Huvinakola village,
Saraguru Hobli,
Saraguru Taluk,
Mysore District.

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

- V/s -

Defendants: 1. Sri.C.Rangaiah,
S/o Late.Chikkachennaiah,
Aged about 75 years,
2. Sri.Channaiah,
S/o Late.Chikkachennaiah,
Aged about 77 years,

3. Smt.Sannathayamma,
W/o Chennaiah,
Aged about 70 years,
4. Smt.Basamma,
W/o C.Rangaiah,
Aged about 68 years,
5. Smt.Nagarathna,
W/o Devaraju,
Aged about 45 years,
6. Smt.Savithri,
W/o Krishna,
Aged about 45 years,
All are R/o Huvinakola village,
Saraguru Hobli,
Saraguru Taluk,
Mysore District.

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

ORDER ON I.A.NO.I

I.A.No.I filed under Order 39 Rule 1 and 2 of Civil Procedure Code praying to an ad-interim order of temporary injunction restring the defendants, their henchmen, servants or any other persons interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property till the disposal of suit.

2. It is the case of the plaintiff that, suit schedule property bearing No.152200101814600148 of Huvinakola village, as per panchayath records the property No.84/84 measuring East-West 10.668 and North-South 12.192 square meters totally measuring 130.06 meters vacant site stands in the name of plaintiff. The plaintiff is absolute owner in possession and enjoyment of the property. The suit schedule property was gifted to Kempssiddaiah , husband of the plaintiff on 17.01.1994 by Basavaiah S/o Late.Javaraiah, the father of the plaintiff and Channaiah S/o Chikkachannaih. Since then was in the name of the plaintiff`s husband until 2011. Later, the plaintiff changed due to fact that a house was sanctioned in the name of the plaintiff under Basava housing scheme in the year 2011-2012. Then on 18.12.2014 Manuganahalli gramapanchayath transferred the katha in to the name of plaintiff as per village sketch and she has been possession and enjoyment of the suit schedule property.

3. It is further submitted that, the 1st defendant has constructed house on the East side of the suit schedule property, remaining defendants are the relatives of 1st defendant. The defendants are trying to interfere with the plaintiff peaceful possession and enjoyment of the suit schedule property. In this regard, the plaintiff husband has lodged complaint before Saraguru police station on 29.04.2024. The Saraguru PS have advised the defendants to not to interfere with the plaintiff peaceful possession and enjoyment of the suit schedule property. Even though defendants did stop the interfere over the ssp. Hence, prays to allow the application.

4. After service of summons defendants No.1 to 6 have appeared through their counsel and 1st defendant has filed written statement and filed adoption memo adopting the written statement as objection to I.A.No.I. The defendant No.2 to 6 have adopted the written statement of the defendant No.1. It is submitted that, 1st and 2nd defendant are the brothers the

defendant No.3 to 6 are their family members. The defendant 1 and 2 are age old person and they have crossed 80 years. In order to protect their land bearing NO.6 measuring 2 acres 20 guntas out of 7 acre 9 guntas including karab filed suit against plaintiffs father and others in O.S.No.103/2001. The said suit is decreed on 07.04.2007. The father of the plaintiff and his brothers filed R.A.No.50/2007 challenging the said judgment and said appeal was also dismissed as not pressed. Then the plaintiff father and his brother filed suit in O.S.No.288/2009 for declaration and injunction with respect of Sy.No.6 measuring 2 acre 20 guntas, the said suit was also came to be dismissed. After dismissal of said suit the father of plaintiff and his brothers preferred an appeal challenging the judgment and decree in R.A.No.95/2014, the said appeal was also dismissed on 01.12.2014. Now the said Javaraiah brought this plaintiff to file the suit to harass the defendants. The plaintiff are her family are no way any right, title, interest over the land bearing Sy.No.6 measuring to an extent of 2 acre

20 guntas and it belonged to these defendants. The boundaries shown by the plaintiff are incorrect. Hence, prays to dismiss the application.

5. Heard the learned counsel appearing for the plaintiffs and also the defendants. Perused the applications, affidavits, objections, pleadings and documents produced from the both sides.

6. Upon hearing arguments and on perusal of materials placed on record the following points that arise for my consideration are:

- 1. Whether the plaintiff has established prima facie case to grant temporary Injunction ?**
- 2. Whether the balance of convenience lies in favour of plaintiff ?**
- 3. Whether irreparable loss or hardship will be caused to the plaintiff if Injunction as prayed in I.A.No.1 is not granted?**
- 4. What order ?**

7. My findings to the above points are as under :

Point No.1 : In the Negative.
Point No.2 : In the Negative.
Point No.3 : In the Negative.
**Point No.4 : As per order for
the following :**

:: REASONS ::

8. Point No.1 to 3: On perusal of said materials it appears that, the plaintiff has filed this suit for permanent injunction against the defendants in respect of property bearing No.84/84. To substantiate her contention she has produced Form No.9, Form 11A, demand register extract, unregistered gift deed, tax paid receipts and endorsement issued by the Saraguru PS. On perusal of Form No.9 make it clear that, property measuring East-West 130.06 and North-South 12.192 square meters stands in the name of plaintiff. It contains the boundaries and measurement, the same boundaries are shown in the plaint schedule. It is pertinent to note that, in the column of mode of acquisition it is shown as gift deed. In the column of supporting document it is mentioned as Thasildar's Gramatana sketch. Katha came to be

mutated in the name of the plaintiff on 12.04.2024. As per version of the plaintiff the suit schedule property was gifted by plaintiff's father to her husband through a gift deed, since the date of gift deed till 2011 katha stands in the name of plaintiff's husband, then katha changed into the name of plaintiff. In order to prove the said aspect, the plaintiff has produced unregistered gift deed. As per the provisions of Registration Act gift deed must be registered since it is unregistered one, therefore it cannot be looked into. For the sake of discussion perused the said document. Upon careful perusal of said document it discloses that plaintiff's father executed a gift deed in respect of property bearing Sy.no.6 measuring to an extent of east-west 35 feet and north-south 45 feet. It is interesting to note that the boundaries shown in the said unregistered gift deed are different from ssp and did not tally with plaint schedule. It is pertinent note that the doubt arises as to whether plaintiff father was having right over the Sy.No.6 to execute said gift deed in favour of husband

of plaintiff. There is recital in the said deed about mode of acquisition of property by father of plaintiff. Therefore, only on the basis of Form 9 and 11 it cant be said that plaintiff is in possession and enjoyment of the suit schedule property.

9. The defendants took up contention that the defendant No.1 and 2 had filed suit in O.S.No.103/2001 against the father of the plaintiff for permanent injunction pertaining to property bearing Sy.No.6 measuring to an extent of 2.20 acres. The said suit came to dismissed on 7.4.2007. then plaintiff's father and his brothers filed RA.No.50/2007 and said appeal was also dismissed. In order to establish said contention, defendants have produced copies of judgment and decree. Upon perusal of said documents which would show that the suit field was by the defendant no.1 and 2 herein pertaining to Sy.No.6 came to be decreed and suit filed by the father of plaintiff and his brothers against the defendant No.1 and 2 for the relief of declaration and injunction with respect of same Survey number i.e., Sy.No.6 measuring 2.20 acres came to be

dismissed. Another point to be noted here that when suit filed by the father of plaintiff for declaration and pi was dismissed, he had no right to execute gift deed infavour of husband of plaintiff and her father was failed to establish that he is owner of property bearing Sy.No.6. Such being the case executing the gift deed in respect of untitled property and mutating the katha on the basis of said untitled document is not acceptable.

10. The plaintiff has produced demand register extract. It is not stated which year this document from and it does not contain measurement and boundaries. The property bearing junjar No.84 is mutated in the name of husband of the plaintiff likewise property bearing junjar No.73 mutated in the name of father of plaintiff. The plea of the plaintiff that her husband acquired the suit schedule property by virtue of unregistered gift deed executed by by her father, but upon careful perusal of demand register extract it shows that two properties are standing one in the name of father of plaintiff

and another one jointly in the name of plaintiff and her husband without having measurement and boundaries. As discussed above the plaintiff's father was not having any right, title or interest over they property bearing Sy.No.6. Except this demand register extract no documents are standing in the name of husband of the plaintiff or father of the plaintiff. Demand register will be issued only for the purpose of paying tax and it is not a document of title. As per say plaintiff unregistered gift deed was executed in the year 1994. Since the date of said unregistered gift deed till 2024 no documents are standing either in the name of father of the plaintiff or husband of the plaintiff. It is pertinent to note that, all of a sudden Form No.9 and 11 came to be mutated in the name of the plaintiff without having documents. As discussed above the father of the plaintiff has not established his ownership and possession with respect of property bearing No.6, when such being the case executing the gift deed with respect of

property No.6 murmuring to an extent of 35 X 45 is not acceptable.

11. Only on the basis of Form No.9 and Form No.11A it cannot be said that, plaintiff is in possession and enjoyment of the suit schedule property. In the absence of material documents it can be safely said that plaintiff has not proved the possession over the suit schedule property and mode of acquisition of suit schedule property.

12. It is pertinent to note that, before granting T.I the court has to conduct mini trial as to whether the plaintiff has shown, prima-facie case or if injunction is not granted irreparable loss will be caused to the plaintiff and to whom greater hardship will be caused, if T.I is not granted. Here the plaintiff has not made out grounds to allow or grant T.I in her favour. There is no document to show that, the defendants are causing interference to the suit schedule property. When plaintiff failed to show the possession over the suit schedule property, interference by the defendants would not arise. On

perusal of over all materials on record, it appears plaintiff has failed to show the prima facie case to grant the relief of temporary injunction.

13. On perusal of documents produced by the plaintiff as well as the defendants, it appears that the plaintiff is not in possession of suit schedule property. Only on the basis of said documents it cannot be said that, plaintiff is in possession of the suit schedule property. Since, defendants have seriously disputed that plaintiff is no way related to property bearing Sy.No.6 measuring 2 acre 20 guntas. Therefore, such questions cannot be determined at this stage. That can be considered at the time of trial. Only the question of possession and prima facie case have to be considered at this stage. Therefore I am of the opinion that, whatever questions raised by the defendants will have to be answered after the trial by considering merits of the case. Therefore, I am of the opinion that, whatever opinions, findings given in this order will not be

considered at the later stage in this case. Therefore, I am of the opinion that, the plaintiff has not established prima facie case.

14. The plaintiff has not made out prima facie case in this case to grant temporary Injunction in favour of the plaintiff she is to show that, there is balance of convenience in her favour more than the defendants. On perusal of material on the record, the balance of convenience does not lies in favour of the plaintiff, when it is compared with the defendants case. Therefore, I am of the opinion that, the plaintiff has not shown the balance of convenience to grant temporary Injunction.

15. The plaintiff has also to establish that, if the temporary Injunction is not granted, they will be put, to greater hardship. The defendants have also to show that, they will be put to greater hardship, if the temporary Injunction is granted in favour of the plaintiff. But, there are no materials to show that, the greater hardship will be caused to the

plaintiff. Therefore, it is to be considered at the time of trial. Hence, I am of the opinion that, the plaintiff has not shown that, she will be put, to greater hardship, if the temporary Injunction is not granted. **Accordingly, I answer the point No.1 to 3 are in the Negative.**

16. Point No.4 : In view of above discussion on Point No.1 to 3 I pass the following :

ORDER

I.A.No.1 filed by the plaintiff U/o XXXIX
Rule 1 and 2 CPC is hereby rejected.

No order as to cost.

(Dictated to the Stenographer, typed by her on computer and corrected by me, then pronounced in the open Court on this day **19th FEBRUARY 2025**)

**(SUSHMA. M),
IInd Addl.Civil Judge & JMFC,
Heggadadevanakote.**