

**THE COURT OF THE ADDITIONAL SENIOR
CIVIL JUDGE AND J.M.F.C., HUNSUR.**

Present: **Smt. Shirin Javeed Ansari, B.A., L.L.B., Hon's LL.M**
Addl. Senior Civil Judge & J.M.F.C.,
Hunsur.

Dated, this the 15th day of September 2021

O.S.NO.101/2017

Plaintiffs : 1. Shiak Abdul Vajid,
Aged about 55 years,
S/o Late Shaik Adbul Rashid,

2. Almas Banu
Aged about 48 years,
S/o Late Abdul Khaleel.

3. Shek Abdul Sadiq
Aged about 50 years,

4. Jakeera Bee,
Aged about 60 years,
W/o Late Umar Shaheb

5. Dilshad
Aged about 45 years,
S/o Late Umar Sab.

6. Abdul Gafoor
Aged about 45 years,
S/o Late Umar Sab

7. Samiulla
Aged about 40 years,
S/o Late Umar Sab.

8. Jabiulla
Aged about 38 years,
S/o Late Umar Sab

9. Nasrin Thaj,
Aged about 40 years,
W/o Late Jabbar Sab

10. Babu Sab
Aged about 45 years,

S/o Late Jabbar Sab.

11. Mehabood,
Aged about 40 years,
S/o Late Jabbar Sab,
12. Esmail
Aged about 42 years,
S/o Late Jabber Sab,
13. Huyath Sab
Aged about 45 years,
S/o Late Jabber Sab,
14. Aslam
Aged about 40 years,
S/o Late Jabber Sab,
15. Akbar
Aged about 38 years,
S/o Late Jabber Sab,
16. Aslam
Aged about 38 years,
S/o Late Jabber Sab,
17. Mathin Taj
Aged about 35 years,
S/o Late Jabber Sab,
18. Jamal Bee
Aged about 50 years,
W/o Late Sather @ abdul Sather Sab,
19. Eliyaz
Aged about 35 years,
S/o Late Sather @ abdul Sather Sab,
20. Fayaz
Aged about 32 years,
S/o Late Sather @ abdul Sather Sab,
All are R/at 9th Cross, Shanthi Nagara
Mysuru.

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

V/s

Defendants:

1. Suffia,
Aged about 76 years,
W/o Late Shaik Dawood Sab @

Chota Sab

2. Rahim
Aged about 55 years,
S/o Late Shaik Dawood Sab @
Chota Sab
3. Akbar Pasha
Aged about 45 years,
S/o Late Shaik Dawood Sab @
Chota Sab
4. Asgar Pasha
Aged about 40 years,
S/o Late Shaik Dawood Sab @
Chota Sab
All are R/at Bommalapura Village,
Bilikere Hobli, Hunsur Taluk,
Mysore Taluk & District.
(D.1 Dismissed)
(D 2 to 4 Sri C.S)

I.A. No. 1

Applicant : Sri. Shaik Abdul Vajid
V/s
Opponents : Smt. Suffia

ORDERS ON IA No.I.A No. 8

Applicant/Defendant No.3 has filed this application U/o 39 Rule 1 and 2 R/w Section 151 of CPC to restrain the Plaintiffs from interfering with the possession of the suit schedule property of the defendant No. 3 in any manner till disposal of the suit .

2. The application is supported by the affidavit of defendant No.3 Sri Shaik Dawood Sab @ chota Sab S/o Akbar Pasha. In the affidavit it is stated that, The suit Schedule properties originally belong to his father hence they are the self acquitted property of

the father of the defendant No 3. After the demise of his father, the Khatha of the suit schedule properties changed to the name of mother of the plaintiff. Subsequently the mother of the defendant No 3 executed a gift deed in favour of defendant No. 3 and his brother. Accordingly, they changed the Khatha of the suit schedule property in their name. The defendant No.3 and his brother are in possession of the suit schedule property till today. The plaintiff without any manner of right or interest over the suit schedule property is trying to interfere with the peaceful possession and enjoyment of the suit schedule property of defendant No.3 by damaging the standing crops, by cutting down the trees standing on the suit schedule property. Therefore it has become necessary to restrain the plaintiffs from interfering with the peaceful possession and enjoyment of the suit schedule property of Defendant No.3. Hence there is a prima- facie case and balance of convenience in favour of the applicant/ defendant No.3. If the application is not allowed, the applicant will be put to irreparable loss and hardship which can not be compensated in terms of money. Hence on these grounds the applicant prays to allow the present application.

3. The present application is opposed by the plaintiff by filing separate objections wherein it is stated that the application filed by the defendant No.3 is neither maintainable in the eyes of law nor on the basis of facts. The suit schedule properties are in joint possession and enjoyment of the plaintiff and defendants and there is no partition till today. The defendant No.3 and his brother without the knowledge of anybody, have transferred the suit schedule properties in his name in order to defeat the rights of the plaintiff. After getting this information the plaintiff demanded their share in the suit schedule properties which, the defendant has

denied. The defendant No.3 have not furnished any documents to show that the suit schedule property originally and exclusively belong there father. Hence there no prima fasia case and balance of convenience in favour of the applicant. Hence if the application is allowed, the plaintiff will be put to hardship. Hence on all these grounds the applicant prayed to dismiss the application till cost.

4. Heard arguments of both the sides and perused the materials available on record.

5. On perusal of the material placed on record the following points arise for my consideration.

1. Whether the plaintiff's have established prima facia case?
 2. Whether the balance of convenience lies in favour of the plaintiff?
 3. Whether irreparable loss or hardship will be caused to the plaintiffs if the injunction is not granted?
 4. What order?
6. My finding to the above points are as under,
1. Point No.1 : in the affirmative
 2. Point No.2 : in the affirmative
 3. Point No.3 :in the affirmative
 4. Point No.4 : As per final order for the following,

REASONS

7. **Point No.1 to 3:** Since these points are interlinked with each other, they are taken up together for consideration in order to avoid repetition, as here under.

8. According to the plaintiff, the suit schedule properties are the family properties of themselves and the defendant no. 3. The plaintiff and defendants are tenants-in-common. They are in joint possession and enjoyment of the suit schedule properties. The plaintiff no. 1 to 20 have filed present suit seeking the relief of declaration to declare that gift deed dated 16.06.2017 executed by defendant No.1. In favour of the defendant No. 3 and 4 in respect of Item No.3 schedule property is not binding on the plaintiff's 4/5th share as the same is null and void-ab-intio. Further for partition and separate possession of the plaintiff's 4/5th share jointly in all the suit schedule properties by directing the defendant No.1 to 4 to effect the partition by metes and bounds of their share and to put the plaintiffs in separate possession of the same and further for mesne profits along with costs. The defendant have contested on the ground that their father has executed a registered gift deed in favour of defendant No.3 and his brother. The defendants are in peaceful possession and enjoyment of the suit schedule property till today. The plaintiff's have no any manner of right or interest over the same. At this juncture the matter is posted for further cross-examination of PW1. The defendant no. 3

has submitted in the application that the plaintiffs are damaging the standing crops and trees in the suit schedule property. Hence they have filed the present application.

9. Though the defendant No.3 has made an allegation against the plaintiffs, admittedly, the case is posted for further cross-examination of PW1. on perusal of the cross examination, nowhere, it is fourth coming that plaintiffs are destroying and damaging the standing crops and trees in the suit schedule property.

10. The plaintiff has sought and prayed to declare that the gift deed dated 16.06.2017 as null and void. On further perusal of the material available on record, it is found that the defendant No.3 has produced copy of the acknowledgment issued by Belikere Police Station, in which, the defendant No.3 has lodged a complaint against the plaintiffs complaining about the damaging the standing crops in the Sy. No. 23/1, 23/2 measuring 9 acre, 36 Guntas. This aspect of the matter prime facia go to establish that there is some disturbance and attempt to damage to the standing crops in the suit schedule property for which the applicant/ defendant No.3 has approached the Bilikere Police Station. In the said of Acknowledgement it also mentioned about the pendency of the present suit. Therefore, it can be presumed that the plaintiffs along with their henchmen have attempted to damage the standing

crops in the suit schedule properties. Under these circumstances of the case, it is necessary to hold that there is a Prima facia case and balance of conveyance in favour of the applicant/defendant No.3. If the present application is not allowed, the applicant would be put to loss and the activities of the persons mentioned in the acknowledgment can not be stopped. Hence in view of this I answer point NO. 1 to 3 in the affirmative.

11. Point No.4: In view of the reasons above I proceed to pass the following,

Order

IA No.8 filed by the
applicant/defendant No.3 U/o 39 Rule 1
and 2 R/w Sec. 151 CPC is hereby
allowed.

The plaintiffs, their men and anybody
claiming under them are hereby
restrained from interfering with peaceful
possession and enjoyment of the suit
schedule properties in any manner till
disposal of the suit.

No orders as to cost.

(Shirin Javeed Ansari)
Addl. Senior Civil Judge & JMFC
Hunsur

