

KAMS710020932019



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND**  
**J.M.F.C., T.NARASIPURA**

**Present : Sri. Venkatesha.K.N.,** <sup>B.A. LLB.</sup>  
Addl. Civil Judge & J.M.F.C.,  
T.Narasipura.

Dated : This the 03<sup>rd</sup> day of December, 2022.

**O.S./266/2019**

Plaintiff : Smt.Gayathri,  
W/o. Mahesha,  
D/o. S.K.Linganna,  
Aged about 31 years,  
R/at No.189, 2<sup>nd</sup> cross,  
Basaveshwara Nagara,  
Nanjangudu Main Road,  
T.Narasipura Town,  
Mysuru District.

(Represented by : Sri. P.S., Advocate.)  
-V/S-

Defendant : Sri.S.L.Ananda Murthy,  
S/o S.L.Linganna,  
Aged about 27 years,  
R/at Sujjaluru Village,  
Muguru Hobli,  
T.Narasipura Taluk,  
Mysuru District.

(Represented by : Sri. A.L.S., Advocate )

\* \* \* \* \*

**Parties to I.A. No.II.**

Applicant/ : S.L.Gayathri.  
Plaintiff

-V/S-

Opponent/ : S.L.Ananda Murthy.  
Defendant

\* \* \* \* \*

**ORDER ON I.A.NO.II UNDER ORDER XXXIX RULE 1 AND  
2 READ WITH SECTION 151 OF C.P.C.**

This is the I.A.No.II filed by the applicant/plaintiff under Order XXXIX Rule 1 & 2 read with Section 151 of C.P.C., seeking Temporary Injunction till pending disposal of the suit.

**Suit/I.A. Schedule Property**

The land bearing Sy.No.188/1, totally measuring 1.26 guntas, situated at Sujjaluru Village, Muguru Hobli, T.Narasipura Taluk the boundary bounded On:-

East by : Land belongs to Gurumallappa,  
West by : Land belongs to Rajashekara S/o  
S.P.Madappa,  
South by : Land belongs to Parashivamurthy,  
North by : Road.

2. In I.A.No.II, it is stated for the reasons mentioned in the accompanying affidavit that, the defendant, his men, agents, representatives, relatives or any persons on their behalf are to be restrained from interfering in any manner whatsoever with the plaintiff's peaceful possession and

enjoyment over the suit/I.A. schedule property until the final disposal of the suit.

3. In the accompanying affidavit, it is stated to treat the averments of plaint as a part of I.A.No.II. It is further stated that, the suit schedule property was originally belongs to one Siddappa of Sujjaluru Village. Further stated that, her father by name Linganna has purchased the suit schedule property under registered sale deed dated 10.01.1991 for valuable sale consideration. Further stated that, her father has been doing contract work belongs to Panchayath and private persons on piece basis. From the income derived from the contract work her father has purchased the suit schedule property in his individual capacity. Further stated that, the suit schedule property was the self acquired property of Linganna. Further stated that, her father has executed the registered gift deed dated 27.06.2016 in her favour and bequeathed the suit schedule property and she has accepted the gift made by her father. Further stated that, by virtue of gift deed dated 27.06.2016 she has been put in possession of the suit schedule property. On the basis of gift deed the Katha of the suit schedule property has been mutated in her name vide M.R No.H17/2015-16 and she has been paid the tax to the concerned authority. She is the absolute owner of the suit schedule property and she has been in peaceful possession and enjoyment over the suit schedule property.

4. Further stated that, she has been worked in Bengaluru for limited period. The defendant has take away the original gift deed dated 27.06.2016, since, she has kept original gift deed and other documents in parental home. Further stated that, she has planted the b

anana crop in the suit schedule property. The suit schedule property consisting of 50 coconut yielding trees and also planted 50 coconut tree for past 4 years. Further stated that, defendant has filed the O.S No.34/2019 before the Hon'ble Senior Civil Judge, T.Narasipura for the relief of partition and separate possession with respect to suit schedule property and other properties. Further stated that, the defendant is no way concerned with the suit schedule property and he has been interfere over the suit schedule property. Further stated that, the defendants are having no manner of right, title or interest and much less the possession over the suit schedule property is making hectic efforts to interfere with her peaceful possession, cultivation and enjoyment over the suit schedule property. Further, if the above I.A. is allowed no hardship or prejudice would be caused to the interest of the defendants and whereas if the above I.A. is not allowed, she will be put to untold hardship and great injury which could not compensated in any other terms. Accordingly, prays to allow the I.A.No.II.

5. On the other hand, the opponents/defendant filed a objections to the I.A.No.II and in his objections he has completely denied the allegations made in the I.A.No.II.

Further contended that, the suit schedule property is the ancestral and joint family property of the plaintiff and defendant. Absolutely there are no valid or legal or sufficient reasons are made out by the plaintiff to seek the equitable relief of permanent injunction. The plaintiff has filed the above suit on the false set of facts and allegations with a malafide intention to harass the defendant. The plaintiff did not approach this court with clean hands. Further contended that, the father of the plaintiff and defendant by name Linganna has purchased the suit schedule property under the earnings of joint family properties. The suit schedule property is a joint family property of plaintiff and defendant and both are having 1/3rd share over the suit schedule property. Further contended that, the father of the plaintiff and defendant by name Linganna has no absolute right or title to execute the alleged registered gift deed dated 27.06.2016 in favour of plaintiff behind the back of defendant with out the consent of the defendant and his another sister by name L.Pavithra. As such the said registered gift deed dated 27.06.2016 is a fraudulent document under which neither the title has been passed to the plaintiff nor the possession is delivered to the plaintiff. Further contended that, the defendant is in actual, physical possession and enjoyment over the suit schedule property. The defendant has been running poultry farm in the suit schedule property.

6. Further contended that, when the alleged registered gift deed dated 27.06.2016 itself is a false and fraudulent document, the Katha held in the name plaintiff in the revenue records have no legal sanctity in eye of law. Further contended that, the banana crop, coconut trees and other fire wood trees have been planted by the father of the defendant being the Kartha of the Hindu joint family. Apart from that, the defendant is running joint family poultry farm in the suit schedule property along with the plaintiff's father since more than 8 years, which is well within the knowledge of the plaintiff and another sister. Further contended that, the defendant has filed the suit in O.S No.34/2019 before the Hon'ble Senior Civil Judge, T.Narasipura for the relief of Partition and separate possession of  $\frac{1}{4}$  th share of all the joint family properties including the suit schedule property. When the plaintiff is not in the possession of the suit schedule property through the bogus registered gift deed which is in questioned in O.S No.34/2019 which is pending for consideration. At that situation the question of alleged interference does not arise at all. Further contended that, the plaintiff has filed the above suit with the oblique motive to take the physical possession of the suit schedule property. The plaintiff is not in physical possession and enjoyment over the suit schedule property. On the other hand the defendant has been running the poultry farm and he has been in possession and enjoyment over the suit schedule property. Further contended that, only the revenue

documents of suit schedule property have been standing in the name of plaintiff but, the plaintiff has not been in possession and enjoyment over the suit schedule property. The exact case of plaintiff is not pleaded with material particulars and either suit shall be dismissed as not maintainable or application shall be rejected for the same. The plaintiffs also suppressed the true material facts before the Court. Hence, the suit of the plaintiff is not maintainable either under law or upon facts. Accordingly, prays to dismiss the I.A.No.II with costs.

7. Heard on both sides and perused the materials available on record.

8. Now the points that will arise for my consideration are:-

1. Whether the applicant/plaintiff has got a prima-facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff suffer irreparable loss and injury if the T.I. is refused?
4. What Order?

9. 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 the order  
for the following:-

**:: R E A S O N S ::****10. Points No.1 to 3:-**

For the sake of convenience and to avoid the repetition of facts, I have taken these Point No.1 to 3 together for my discussion in order to avoid repetition of facts.

In this case, I have completely gone through the entire suit file. This is the suit filed by the applicant/plaintiff for the relief of Permanent Injunction. In I.A.No.II, it is stated for the reasons mentioned in the accompanying affidavit that, the opponent/defendant is to be restrained from interfering in any manner whatsoever with the plaintiff's peaceful possession and enjoyment over the suit/I.A. schedule property until the final disposal of the suit. In the accompanying affidavit, it is stated that, she has been in possession over the suit schedule property. From the income derived from the contract work father of the plaintiff has purchased the suit schedule property in his individual capacity. The suit schedule property was the self acquired property of Linganna and he has executed the registered gift deed dated 27.06.2016 in favour of plaintiff and bequeathed the suit schedule property and plaintiff has accepted the gift made by her father. On the basis of gift deed the Katha of the suit schedule property has been mutated in her name vide M.R No.H17/2015-16 and she has been paid the tax to the concerned authority. Plaintiff is the absolute owner of the suit schedule property and she has been in peaceful possession and enjoyment over the suit schedule property.

Further stated that, the defendant is trying to make an hectic effort to interfere with her peaceful possession and enjoyment over the suit schedule property. Therefore, the act of the defendant is to be restrained, otherwise, the plaintiff will be put to great hardship. Hence, the plaintiff has prima facie case and balance of convenience. Accordingly, prays to allow the I.A.No.II.

11. On the other hand, the opponents/defendants filed a objections to the I.A.No.II and in their objections they have completely denied the allegations made in the I.A.No.II. the father of the plaintiff and defendant by name Linganna has purchased the suit schedule property under the earnings of joint family properties. The suit schedule property is a joint family property of plaintiff and defendant and both are having 1/3rd share over the suit schedule property. Further contended that, the father of the plaintiff and defendant by name Linganna has no absolute right or title to execute the alleged registered gift deed dated 27.06.2016 in favour of plaintiff behind the back of defendant with out the consent of the defendant and his another sister by name L.Pavithra. As such the said registered gift deed dated 27.06.2016 is a fraudulent document under which neither the title has been passed to the plaintiff nor the possession is delivered to the plaintiff. Further contended that, the banana crop, coconut trees and other fire wood trees have been planted by the father of the defendant being the Kartha of the Hindu joint family. Apart

from that, the defendant is running joint family poultry farm in the suit schedule property along with the plaintiff's father since more than 8 years, which is well within the knowledge of the plaintiff and another sister. Further contended that, the defendant has filed the suit in O.S No.34/2019 before the Hon'ble Senior Civil Judge, T.Narasipura for the relief of Partition and separate possession of  $\frac{1}{4}$  th share of all the joint family properties including the suit schedule property. When the plaintiff is not in the possession of the suit schedule property through the bogus registered gift deed which is in questioned in O.S No.34/2019 which is pending for consideration. At that situation the question of alleged interference does not arise at all. Therefore, the plaintiffs have no prima facie case and balance of convenience. Accordingly, prays to dismiss the I.A.No.II with cost.

12. During the course of arguments, the learned counsel for plaintiffs submitted that, the plaintiff has made out prima facie case and balance of convenience. Therefore, it is necessary in the interest of justice and equity to allow the I.A.No.II.

13. On the other hand, the learned counsel for defendants has also argued that, the suit schedule property is the joint family property of plaintiff and defendant. The defendant has filed the suit for partition and separate possession over the joint family properties including the suit schedule property. The said fact has been pending for

consideration before the Hon'ble Senior Civil Judge, T.Narasipura. Further argued that, the defendant has filed the O.S No.34/2019 for the relief of partition on 11.09.2019. Thereafter the plaintiff has filed the above suit for the relief of permanent injunction on 21.12.2019. Hence, the said fact clearly goes to show that, the plaintiff has filed the false suit against the defendant. Further argued that, the plaintiff is not in possession over the suit schedule property. Further the defendant has been running the poultry farm in the suit schedule property and he has been in the peaceful possession and enjoyment over the suit schedule property. Therefore, the relief of injunction cannot be granted to a person who have not at all in the possession of the suit property. Moreover, the present I.A. is filed only to defraud the rights of the defendant. Therefore, it is clearly found that the plaintiff has no prima facie case and balance of convenience. Accordingly, prays to reject the I.A.No.II with cost.

14. After perusal of the entire case file including I.A.No.II and accompanying affidavit and objections to I.A.No.II and after hearing on both sides on I.A.No.II, I have also gone through the Order XXXIX Rule 1 of C.P.C. which reads as follows:-

“Cases in which temporary injunction may be granted. Where in any suit it is proved by affidavit or otherwise-

(A) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongly sold in execution of a decree, or

(B) That the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors,

(C) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

The Court may by order grant temporary injunction to restrain such act or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.”

15. At this juncture, since the plaintiff prayed for temporary injunction, now let me see whether the plaintiff has made out prima facie case, balance of convenience lies in her favour or whether irreparable injury will be caused to the plaintiff if temporary injunction is refused. After careful scrutiny of the provision of Order XXXIX Rule 1 of C.P.C., entire case file and documents produced by the plaintiff as well as defendant, it is mandatory rule that the plaintiff has to show by placing affidavit and other materials that she

has prima facie case to obtain the relief of temporary injunction.

16. In this case, the I.A.No.II filed to restrain the defendant from causing interference in suit schedule property till pending disposal of the case. It is the case of the plaintiff that, she has been in possession over the suit schedule property and same has been gifted by her father under registered gift deed dated 27.06.2016. Now the defendant is trying to interfere with the possession of the suit schedule property. The plaintiff in support of her case placed the documents of copy of copy of gift deed dated 27.06.2016, copy of sale deed dated 10.01.1991, copies of encumbrance certificate and copy of R.T.C extract.

17. On the other hand, the defendant has produced the documents of copy of order sheet in O.S No.34/2019, copy of plaint in O.S No.34/2019, copy of I.A U/o 39 rule 1 and 2 of C.P.C in O.S No.34/2019, copy of genological tree, copy of R.T.C extract, copy of gift deed dated 27.06.2016, copy of sale deed dated 26.03.2016, copy of mutation register extract, copy of legal notice dated 19.07.2019 and 02.08.2019, photographs and C.D.

18. On perusal of the sale deed dated 10.01.1991 it reveals that, father of the plaintiff and defendant has purchased the suit schedule property for valuable sale consideration. It is also admitted by the defendant. Further

on perusal R.T.C extract it reveals that, the suit schedule property has been standing in the name of plaintiff.

19. Further on perusal of copies of order sheet, plaint, I.A in O.S No.34/2019 which reveals that, the defendant has filed the O.S No.34/2019 against his father and sisters including the plaintiff for the relief of partition and separate possession with respect to family properties including the suit schedule property. Further reveals that, the defendant has filed the O.S No.34/2019 on 11.09.2019 and clearly stated that the suit schedule properties are the joint family properties of himself and defendant. Further reveals that, the defendant has clearly denied the execution of gift deed dated 27.06.2016 and challenged the legality of said gift deed. On perusal of photos which reveals that, banana samplings, coconut trees and poultry farm have been situated in the suit schedule property.

20. On perusal of the documents produced by the both sides it is clear that both parties have claimed the right over the suit schedule property. Both the parties have been admitted the registered sale deed dated 10.01.1991 and also admitted the type of acquisition of the suit schedule property. Admittedly the father of the plaintiff has purchased the suit schedule property under registered sale deed dated 10.01.1991. Further admittedly the father of the plaintiff has executed the gift deed in favour of plaintiff under registered gift deed dated 27.06.2016. Admittedly the

revenue records of suit schedule property have been standing in the name plaintiff. Further it is the suit for permanent injunction and this court has lay his hands on the aspect of possession only. In order to prove the prima facie case the plaintiff has produced the sale deed, gift deed and R.T.C extract. On perusal of said documents, it is crystal clear that, the documents of the suit schedule property have been standing in the name of plaintiff. Further the defendant has filed the O.S No.34/2019 for the relief of partition and separate possession against the plaintiff with respect to suit schedule property. The defendant has contended that the suit schedule property is the joint family property of plaintiff and defendant. The said fact has been clearly stated in the O.S No.34/2019 and the said fact has been pending for consideration before the Hon'ble Senior Civil Judge, T.Narasipura. More over the defendant has filed the O.S No.34/2019 on 11.09.2019 for the relief of partition and separate possession and obtained temporary injunction for not to alienate the suit schedule property. Thereafter the plaintiff has filed the above suit for the relief of bare injunction. It is the well settled principle of law that, when the comprehensive suit for partition and separate possession is pending at that situation the suit for permanent injunction is not maintainable and also not considerable. More over the plaintiff has filed the above suit on 21.12.2019 after filing of the O.S No.34/2019. The said act of the plaintiff clearly shows that, the plaintiff has filed

the above suit counter to the suit for partition. Hence, the said act of the plaintiff is not permissible under law. Moreover on perusal of photographs produced by the defendant which clearly disclosed that, there is a poultry farm situated in the suit schedule property as contended by the defendant. But, the plaintiff also not denied the said fact. The plaintiff has contended that the suit schedule property is the self acquired property of her father. But, the defendant has contended the suit schedule property is the joint family property of plaintiff and defendant. The said aspect has been pending before the Hon'ble Senior Civil Judge, T.Narasipura. Till then the question of self acquired property and joint family property is not been considered by this court that to in the suit for permanent injunction.

21. Further the plaintiff has filed the above suit for the relief of permanent injunction that, she has been in peaceful possession and enjoyment over the suit schedule property. Hence, its required full pledged trial. At this stage the plaintiff has not produced any prima facie materials to grant injunction against the defendants. At this stage the contention of the plaintiff is not accepted and it requires full fledged trial.

22. Since, the relief under Order XXXIX Rule 1 and 2 of C.P.C. is equitable and discretionary, if this I.A. is allowed, the great injustice to be caused to the defendants. Therefore, in my considered opinion, in the interest of

justice and equity, if this I.A. is dismissed, no hardship will be caused to the plaintiff rather it helps in smooth going trail of the case. Therefore, in my opinion, the plaintiff has no prima facie case to have the relief claimed in I.A.No.II. Otherwise, the loss which caused to the plaintiff from allowing the I.A.No.II can be compensated. In the interest of justice and equity, it is necessary to reject this I.A.No.II. Hence, I am of the opinion that, the plaintiff has not made out prima facie case to allow this I.A.No.II. However, the parties are at liberty to prove their case during the trail.

23. As far as the balance of convenience and irreparable injury, it is clear that the plaintiff is agitating is remedy over the suit property that is to be decided during trial stage. In order to mitigate the risk of injustice, the relief by way of injunction could not be granted to plaintiff. If I.A. is not allowed, injury caused to plaintiff could be compensated in terms of damages. Upon weigh of need of injunction and balance of convenience, the balance of convenience does not tilt in favour of plaintiff. On considering the proportionate injuries to either parties, it is clear that, the plaintiff could be adequately compensated if injunction is refused.

24. Without prejudice to the merits of the case, at this juncture, it is clear that by looking into the case of the plaintiff, the plaintiff has not made out prima facie case and balance of convenience does not tilt in favour of plaintiff and

if temporary injunction is not granted, no hardship or injury will be caused to the plaintiff. Accordingly, **Point No.1 to 3 are answered in the 'Negative'**.

25. **Point No.4:-** In the light of the above discussion, I proceed to pass the following:-

**ORDER**

I.A.No.II            filed            by            the  
applicant/plaintiff under Order XXXIX  
Rule 1 and 2 read with Section 151 of  
C.P.C., is hereby rejected.

No order as to costs.

*[Fed to the computer to my dictation by the stenographer after verified by me, print taken by him and after signed by me, pronounced in the open Court dated this the 03<sup>rd</sup> day of December, 2022.]*

**(Venkatesha.K.N.)**  
**Addl. Civil Judge & J.M.F.C.,**  
**T.Narasipura.**

(Order pronounced in the open Court, vide  
separate order.)

**ORDER**

I.A.No.II filed by the  
applicant/plaintiff under Order XXXIX  
Rule 1 and 2 read with Section 151 of  
C.P.C., is hereby rejected.

No order as to costs.

Addl. Civil Judge & J.M.F.C.,  
T.Narasipura.