

**IN THE COURT OF THE PRL CIVIL
JUDGE & JMFC., CHANNAPATNA**

**Present: NATARAJ.S. MBA, LL.B.,
Prl. Civil Judge and JMFC.,
Channapatna**

Dated this the 27th day of August 2019

O.S.NO.105/2018

Plaintiff/s : 1. Sri. C.S. Puttamadegowda
S/o late Shankaregowda
Aged about 69 years,
R/a: Maruthinagara,
Kote, Channapatna Town,
Ramanagara District.

2. Sri. Ramachandra
S/o late Shankaregowda
Aged about 65 years,
R/a: Chakkere Village,
Maluru Hobli,
Channapatna Taluk,
Ramanagara District.

3. Sri. Appajigowda
S/o late Shankaregowda
Aged about 58 years,
R/a: Chakkere Village,
Maluru Hobli,
Channapatna Taluk,
Ramanagara District.

[By Sri. T.M. Lakshmana
Vs. Adv]

Defendant/s : 1. Smt. Ammannamma
W/o late Shankaregowda
Aged about 84 years,

R/a: Varagarahalli,
Maddur Taluk,
Mandya District.

2. Sri. Krishnappa
S/o late Shankaregowda
Aged about 60 years,
3. Sri. C.K. Shankar
S/o Krishnappa
Aged about 26 years,
4. Sri. Subba
S/o late Shankaregowda
Aged about 54 years,

D2 to D4 are R/a:
Chakkere Village,
Malur Hobli,
Channapatna Taluk,
Ramanagara District.

5. Smt. Padma
D/o late Shankaregowda
Aged about 52 years,
R/a: Varagarahalli,
Maddur Taluk,
Mandya District.
6. Sri. Ravi @ Raveendra
Kumar
S/o late Srikantegowda
Aged about 45 years,
R/a: Hottigana Hosahalli,
Maluru Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri. Gangadhar.S Adv. for
D1 & D5, Sri. N.T.R. Adv. for
D2, Sri. Lokesh.A, Adv. for D3,
Sri. P.L. Narayanaswamy Adv.
for D4)

PARTIES TO I.A.III

Applicant/plaintiff : C.S. Puttamadegowda
and others

V/S

Opponents/Defendants : Smt. Ammannamma and
others

ORDER ON I.A.III

The plaintiffs filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (Hereinafter referred as 'the Code') for interim injunction for restraining the defendant no.3 from selling, alienating, transferring and creating third party interest in the property bearing Sy.no.49/1, measuring 13 guntas situated at Sankalgere village, Malluru Hobli, Channapatna, (Hereinafter referred as 'the suit property').

2. Briefly stated Sh. Shankare Gowda was the owner of the suit property. Sh. Karam Singh expired. Smt. Ammanamma/ wife of Sh. Shankare Gowda (defendant No.1) predeceased him.

3. The plaintiffs are the sons of Sh. Shankare Gowda. Besides the plaintiff, Sh. Karan Singh had left his son Sh. Krishna and Sh.Subba and daughter Smt. Padma. The plaintiffs and the defendant no. 2, 4 and 5 are related to each other as brothers and sisters.

4. The case of the plaintiffs is that Smt. Ammanamma had not executed any Gift deed in favor of the defendant No.3. The defendant no. 3 has fabricated a Gift deed dated 05.02.2018. It is stated that the plaintiffs had

acquired knowledge of the said Gift deed when they received a notice from the revenue authority with regard to mutation of the suit property in favor of defendant no.

3. The plaintiff submitted his objections thereto. Sh. Karan Singh had no love and affection for the defendant no.1. It is stated that the plaintiffs have a share in the suit property and in case the defendant No.3 succeeds in selling the suit property, they would suffer irreparable loss and injury. It is stated that the defendant no. 3 has no right to sell the suit property. Therefore, the plaintiff filed the suit for partition and separate possession and consequential relief of permanent injunction.

5. Defendant No.3 has not filed written statement even though appeared before the court through his counsel.

6. I have heard arguments of Advocate for the plaintiffs and for the defendant no.3 and perused the record.

7. In order to be entitled to the relief of interim injunction, the plaintiffs must make out a prima-facie case. The plaintiffs must show existence of balance of convenience in their favor and against the defendant No.3 and irreparable loss and injury resulting from withholding of relief of interim injunction.

8. It is the admitted case of the parties that Sh. Shankare Gowda was the owner of the suit property. The issue of due execution of the Gift deed can only be decided on the strength of evidence. In so far as contention of the Ld. Counsel for defendant No.3 that the defendant no.3 had served Smt.Ammanamma when she was neglected by plaintiffs and other defendants and

therefore, she had gifted the suit property in favor of the defendant no.3 is concerned, it can be stated that at the stage of the decision of the application under Order 39 Rule 1 and 2 of the Code, the Court takes prima-facie view of the matter. It is not permissible for the Court to delve into factual controversies involved in the suit as that stage would come only after recording evidence of the parties. At this stage, the Court cannot give any final opinion as that would amount to prejudging the issues. In the opinion of the court, the suit involves triable issues which cannot be gone into without recording evidence of the parties. More so, it is also clear the suit property being inherited by the defendant No.1 from her husband she did not have absolute right to execute the gift deed in favor of defendant No.3. The plaintiffs have a prima-facie case in his favor.

9. Denial of interim injunction to the plaintiffs would lead to multiplicity of the proceedings. The balance of convenience is also in favour of the plaintiffs as multiplicity of proceedings would cause delay in the disposal of the suit. The subject matter should be preserved till the decision of the suit.

10. In case the defendant no.3 alienates the suit property, the plaintiffs would suffer irreparable loss and injury which cannot be compensated in terms of money.

11. The application under Order 39 Rule 1 and 2 read with Section 151 of the Code filed by the plaintiffs deserves to be allowed.

12.Nothing stated herein shall tantamount to expression on the final merits of this case. This order would remain operative till the decision of the present suit.

13. In view of the reasons assigned above, above, I proceed to pass the following order;

ORDER

IA. No. III filed by the applicant/plaintiffs under Order 39 Rule 1 and 2 read with section 151 of Civil Procedure Code is hereby allowed.

Consequently, defendant No.3 is hereby restrained from alienating or creating any encumbrance over the suit schedule property till the disposal of the suit.

No order as to costs.

For P/E call on

(Dictated on line computer to the stenographer, computerized by her, corrected, then signed by me and pronounced in the open court on this the 27th day of August 2019)

Sd/-

(S.NATARAJ)

Prl. Civil Judge & JMFC.,
Channapatna.