

**IN THE COURT OF THE PRL CIVIL JUDGE AND  
J.M.F.C AT CHANNAPATNA**

**PRESENT: Smt. Namrata Rao.K.S**  
B.A.L, L.L.B., M.B.L  
Addl., Civil Judge and J.M.F.C.  
Channapatna.

**Dated: This the 13<sup>th</sup> day of September, 2017**

**O.S.No.104/2017**

**PLAINTIFF:** Sri.Nagesh  
S/o Late Idegowda  
Aged about 40 years,  
R/at. Belakere Village,  
Malur Hobli,  
Channapatna Taluk,  
Ramanagara District.

(By Sri.Manjesh Kumar.C., Advocate)

V/s

**DEFENDANTS:**

1. Smt.Savithramma  
W/o Late Odegowda,  
Aged about 66 years.
2. Smt. Manjula  
W/o C.Mahadevaiah  
D/o Late Odegowda  
Aged about 35 years.

Both are residing at  
Belakere village,  
Malur Hobli,  
Channapatna Taluk,  
Ramanagara District.

(By Sri.D.S.Sridhar ., Advocate)

**PARTIES TO I.A.NO.**

**APPLICANT:** : Sri.Nagesh

-V/s-

**RESPONDENT** : Smt.Savithramma & Other

**ORDERS ON I.A**

1. The application is filed u/Order XXXIX Rule 1 and 2 of C.P.C by the plaintiff. The defendant has adopted the averments of the written statement as objections.

2. This is a suit for partition and separate possession of suit schedule property. The case of the plaintiff is that the suit schedule property is the joint family property of plaintiff and defendants. In the year 2011, the defendants colluding with each other and thereby a gift deed was executed in favour

of the second defendant. The same is not valid. Thus this suit claiming his 4/6<sup>th</sup> share in the suit schedule property.

3. The defendant contends that the gift deed is genuine deed and that other joint family properties are there which are not included in the above case. .

4. Through the IA.No.II, the plaintiff seeks for an order of temporary injunction against the defendants from alienating the suit schedule property till the disposal of the suit.

5. On perusal of the materials on record, the following points arise for my consideration:

1. Whether the plaintiff has made out a prima-facie case in his favour?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the irreparable loss or injury will be caused to the plaintiff if temporary injunction is not granted?
4. What order?

6. My findings on the above points are as under;

- 1) In the Negative,
- 2) In the Negative,
- 3) In the Negative,
- 4) As per final order, for the following;

### **REASONS**

**7. Point No.1:-** This is a suit for partition of 4/6<sup>th</sup> share of the plaintiff in the suit schedule property. The plaintiff says that though suit schedule property is a joint family property, the defendant No.1 executed a Gift deed dated 26.02.2011 in favour defendant No.2. The plaintiff has a right over the property and till the above suit is decided, the defendants must not be permitted to alienate the suit schedule property.

**8.** I have perused the documents on record. The gift deed is a registered one. At this stage the legality and the genuinity of the gift deed cannot be looked into the registered documents hold a presumption of its valid execution. This presumption has to be rebutted by the party who

challenges it. My hands are supported by the decision of the Hon'ble Supreme Court in **Prem Singh V/s Birbal and others reported in [(2006) 5 SCC 353]** wherein it is stated that the law holds a presumption in favour of the registered document. The validity of the gift deed depends on the outcome of the trial.

9. The plaintiff says that he and defendant constitute a Hindu joint family suit schedule property is a joint family property. If it is so the plaintiff and the defendants are co-owners. Injunction cannot be given against a co-owner/Co-sharer. Even if the defendant alienates the suit schedule property the share of the plaintiff, if at all he is entitled to, will not have any binding Section 44 of the T.P.Act does provide the same. Further Section 44 of the transfer of property act provides that when one of the coparcener of immovable property transfers his interest in the immovable property, then transferee will get only that extent of share or right which the transferor has.

**10.** Besides, if the matter is viewed on discussed above, from both the angles the plaintiff has failed to show prima facie case in his favour. Hence I answer the point No. 1 in the Negative.

**11.** During the course of the arguments, the counsel for the defendant submitted that there are some more joint family properties and plaintiff has not intentionally included them and therefore the equitable relief of injunction cannot be granted. But no details are produced at this stage by the defendants to substantiate their claim.

**12. Point No.2 and 3:-** In view of the discussion made above with regard to point No.1, Point No.2 and 3 are taken together. When the plaintiff has failed to show prima facie case in his favour the question of considering the balance of convenience and irreparable loss and injury does not arise, hence I answer the points No.2 and 3 in the Negative.

**13. Point No.4:-** As per discussion made above, I proceed to pass the following;

**ORDER**

I.A. filed under Order 39 R.1 & 2  
r/w.Sec.151 of CPC is dismissed.

No order as to cost as parties are  
relatives.

(Dictated to stenographer, transcribed by her, the transcript  
corrected by me and then pronounced in the open court on  
this the **13<sup>th</sup>** day of September, 2017)

(Namratha Rao.K.S)  
Addl., Civil Judge and J.M.F.C,  
Channapatna.

(Order pronounced in the open court)

**ORDER**

I.A. filed under Order 39 R.1 & 2  
r/w.Sec.151 of CPC is dismissed.

No order as to cost as parties are  
relatives.

(Vide Separate order)

Addl., Civil Judge and J.M.F.C,  
Channapatna.