



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C., AT :  
MAGADI.**

**Present:**

**Sri. Sandeep S. Reddy, B.A., LL.B.,  
Addl. Senior Civil Judge & JMFC., Magadi**

**DATED: THIS THE 19<sup>th</sup> DAY OF APRIL 2024  
O.S.No.10/2015**

- Plaintiffs** : 1. Smt. Kariyamma,  
D/o late Lakshminarasimhaiah,  
Aged about 52 years,  
R/at Uddanahalli Village,  
Tavarekere Hobli,  
Bengaluru South Taluk.
2. L. Narasimhaiah,  
S/o late Lakshminarasimhaiah,  
Aged about 55 years.
3. L. Narasimhamurthy,  
S/o late Lakshminarasimhaiah,  
Aged about 51 years.

Plaintiff no.2 and 3 both are R/at  
Ankaiahayanapalya Village,  
Ajjanahalli Dakale, Tavarekere Hobli,  
Bengaluru South Taluk.

**(By Sri. K.R.A., Advocate)**

--V/s--

- Defendants** : 1. Sri. Siddappa,  
S/o late Chikkamuthaiah,  
Aged about 54 years.

KARN410000432015



O.S. No.10/2015(Or.)

2. Sri. Narasimhamurthy,  
S/o Siddappa,  
Aged about 28 years.

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

**ORDER ON IA NO.12 U/O.39 R.1 & 2 of C.P.C.,**

The present suit is for declaration, permanent injunction and consequential reliefs.

2. The present application has been filed by the plaintiff U/o. XXXIX Rule 1 and 2 R/w. Sec.151 of C.P.C., praying to temporary injunction restraining the defendants, their agents or anybody claiming under them from changing the nature of the suit schedule properties pending disposal of the aforesaid suit.

3. The plaintiff in the accompanying affidavit has stated that, they are in actual physical possession and enjoyment of the suit schedule property by virtue of the sale agreement dated: 10.02.1996, 30.06.1999 and Will dated: 15.11.1989 executed by deceased Hanumaiah with respect to the application schedule properties. That, Late. Sri. Hanumaiah who was the earlier owner of the schedule property had executed a Will dated:

**KARN410000432015****O.S. No.10/2015(Or.)**

15.11.1999 in favour of the plaintiffs. That, after the death of Sri. Hanumaiah the defendants with malafide intention has been claiming themselves to be legal successors to deceased Hanumaiah in a fraudulent manner and created a Will in their favour. That, the Will dated: 26.11.1999 created by defendant No.1 in his name. That, vide Order dated: 30.06.2012 the probate and succession certificate was issued in favour of defendant No.1. The plaintiff further states that, the probate and succession certificate is not binding on him. That, there is a Judgement of Hon'ble Addl. Civil Judge & JMFC., Magadi in O.S.No.449/2012 passing permanent injunction order dated: 15.12.2012. That, defendant No.1 had filed application seeking conversion of the suit schedule land properties and was trying to change the nature of the schedule property. Hence, the plaintiff has filed the aforesaid application.

4. The defendants have filed objections to the aforesaid application by contending that, late. Hanumaiah was looked after by defendant No.1. That, late. Hanumaiah during his last days has executed a Will dated: 26.11.1999 in favour of defendant No.1. That, the Hon'ble District and Sessions, Ramanagara in P & SC No.5/2012 had issued the probate and

KARN410000432015



**O.S. No.10/2015(Or.)**

succession certificate in favour of defendant No.1. That, the miscellaneous petition No.10/2014 filed by the plaintiffs challenging the probate was dismissed. That, the plaintiff had being interfering with the possession of the schedule properties and that the plaintiff has been interfering and unnecessarily trying to dispossess the defendants. That, defendant No.1 is the absolute owner of the schedule properties and has filed the representation before DC for converting the land to non-agricultural purpose. Hence, the defendant has prayed for dismissing the aforesaid application filed by the plaintiff.

5. Heard arguments of counsel for plaintiff and defendants.
  
6. Considering the contentions of the counsel, following points arise for my consideration.
  1. Whether plaintiff has made out prima-facie case for grant of temporary injunction?
  2. Whether balance of convenience is in favour of the plaintiff?
  3. Whether plaintiff will suffer irreparable injury if temporary injunction is not granted?
  4. What order?

KARN410000432015



O.S. No.10/2015(Or.)

7. My findings for the above points are as follows.

- Point No.1 : In the negative  
Point No.2 : In the negative  
Point No.3 : In the negative  
Point No.4 : As per final order  
For the following;

### **REASONS**

8. **Point No.1**:- It is the case of the plaintiff that, he is claiming the rights over the schedule property through the Will dated: 15.11.1999 and through two sale agreements dated: 10.02.1996 and 30.06.1999. The said sale agreements are the unregistered sale agreements. The plaintiff has paid the duty and penalty imposed by this Court vide Order dated: 04.06.2022 and 18.01.2023.

9. The plaintiff is claiming his right through the Will dated: 15.11.1999, which the plaintiff says was executed by Sri. Hanumaiah. The plaintiff is claiming his rights through the Will and registered sale agreements.

10. It is pertinent here to mention the **Suraj Lamps V/s. State of Haryana** in Spl. Leave petition 13917/2017, DD. 11.10.2012, the Hon'ble



Supreme Court of India has stated as under;

***“.....Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain v. Canara Bank - 94 (2001) DLT 841, that the “concept of power of attorney sales have been recognized as a mode of transaction” when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintentionally misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.***

***16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of ‘GPA sales’ or ‘SA/GPA/WILL transfers’ do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds***



*of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.*

*17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.*

*18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain*



*specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.*

*19. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of*

KARN410000432015



O.S. No.10/2015(Or.)

***attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bonafide/genuine transactions."***

11. It is pertinent here to mention that, the plaintiff is claiming his rights through the agreement of sale and Will, which is not even proved to be the last Will of Sri. Hanumaiah. Admittedly, the Will dated: 15.11.1999 is relied upon by the plaintiff and defendant is claiming his rights through the Will dated: 26.11.1999. Admittedly, the plaintiff has not prima-facie shown that, the Will dated: 15.11.1999 is the last Will of Sri. Hanumaiah.

12. The plaintiff has not shown that he is possession of the schedule property. The plaintiff is claiming possession through agreement of sale and through the Will. The plaintiff has not paid the stamp duty on the unregistered agreement of sale as on the date of filing of the aforesaid suit. Moreover, the agreement of sale does not symbolize the handing of possession of the schedule property. The unamended Sec.53A of Transfer of Property Act does not come to the support of the plaintiff with respect to the possession. The plaintiff has not produced any documents to show his

KARN410000432015



O.S. No.10/2015(Or.)

possession. At this juncture the plaintiff has not prima-facie made out a case to show his concluded right capable of being enforced for seeking injunction.

13. Hon'ble Supreme Court of India in **APMC V/s. Girdaribai Ramjibai** AIR 1997 SC 2674 had stated as under;

***"...a temporary injunction can be granted only if the person seeking injunction has a concluded right capable of being enforced by way of injunction."***

Hence, the plaintiff has failed to show the prima-facie case and he has failed to show that he has the right capable of being enforced. Hence, I answer point No.1 in the negative.

14. **Point No.2:-** The plaintiff has not made out prima-facie case as discussed above.

15. The Hon'ble Supreme Court of India in **Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.**, (1999) 7 SCC 1 : 1999 SCC OnLine SC 774 at page 13:



***24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:***

***(i) extent of damages being an adequate remedy;***

***(ii) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;***

***(iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;***

***(iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case — the relief being kept flexible;***

***(v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;***



O.S. No.10/2015(Or.)

*(vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;*

*(vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.*

16. Thus, it can be seen from the aforesaid facts and from the Judgement of Hon'ble Supreme Court of India that, the amount of injury that the defendants would suffer, would be more than the plaintiff. Hence, following the aforesaid judgement I hold, balance of convenience lies in favour of defendants and I answer point No.2 in the negative.

17. **Point No.3:-** It is pertinent here to mention that, there is another I.A., filed by plaintiff seeking for the relief of temporary injunction of not to alienate the schedule property against the defendants. The plaintiffs have not pressed the said I.A. At this stage the plaintiffs have not made out the prima-facie case or any rights capable of being enforced. Hence, I answer point No.3 in the Negative.

KARN410000432015



O.S. No.10/2015(Or.)

18. **POINT NO.4:** In view of reasons on point No.1 to 3, I proceed to pass the following,

**ORDER**

**IA No.12 filed U/O.39 Rule 1 and 2 of  
C.P.C., filed by plaintiff is hereby rejected.**

**Parties to bear their own cost.**

**Call on for issues by 01.06.2024.**

(Dictated to the Typist, transcribed & typed by her, corrected by me and then pronounced in the open court on this the **19<sup>th</sup> day of April, 2024.**)

**(Sandeep S. Reddy)**

**Addl. Sr. Civil Judge & JMFC.,  
Magadi.**