

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

Present:

Sri. Hanumanth Satwik., LL.M,
Addl. Senior Civil Judge & JMFC., Magadi

DATED: THIS THE 23rd DAY OF APRIL, 2021

O.S.No.44/2020

Plaintiffs : 1. Sri. Manjunantha S/o Mruthyunjaya,
Aged about 52 years.
2. Sri. Jagadish S/o Mruthyunjaya,
Aged about 45 years.

Both are R/at,
Pemmanahalli Village,
Solur Hobli, Magadi Taluk,
Ramanagara District.

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

V/s

Defendants : 1. Sri. Mruthyunjaya,
S/o late Chikkagangappa,
Aged about 85 years,
R/at Pemmanahalli Village,
Solur Hobli, Magadi Taluk,
Ramanagara District.
2. Sri. Gurubasavaiah S/o late Honnamma,
Aged about 35 years.

3. Smt. Yamuna D/o late Honnamma,
Aged about 26 years.

Defendant No.2 and 3 R/at
Parmanna Layout, Near Park,
Nelamangala Town,
Bengaluru Rural District.

4. Smt. Komala W/o Nagaraja,
Aged about 50 years,
R/at Kuvempunagara,
Opp EBINISER English School,
Near Gopi Venkateshwara Choultry,
Nelamangala Town,
Bengaluru Rural District.

5. Smt. Sujatha W/o Jagadish,
Aged about 35 years,
R/at Pemmanahalli Village,
Solur Hobli, Magadi Taluk,
Ramanagara District.

(Defendant no.1, 4 & 5 By Sri. **A.K.H** Advocate)

ORDER ON IA NO.IV

The present suit is for partition and separate possession. The plaintiffs further pray to declare the gift deed dated:26-03-2019 and 16-12-2019 as null and void and not binding on their share.

2. The present application has been filed by defendant no.1 U/o.XXXIX rule 1 and 2 r/w Sec.151 of CPC praying to temporarily restrain the plaintiffs from disturbing the residential house and

troubling from doing agricultural work and crops. It is the case of defendant no.1 that the suit schedule properties are his absolute properties. They were acquired through Will. The plaintiffs have no interest over the suit schedule properties. He is residing in item no.16 of the suit schedule property. Plaintiff no.1 is residing in item no.17 of the suit schedule property. Plaintiff no.2 is residing in item no.15 of the suit schedule property. The plaintiffs are interfering in item no.16 of the suit schedule property. He gets income from item no.3 and 4 of the suit schedule properties. The plaintiffs are removing arecanut and coconut trees and agricultural crops. In this regard defendant no.1 prays as above.

3. The plaintiffs in the objections to the application denied the application averments. The plaintiffs contended that they are the sons of defendant no.1. Defendant no.4 and 5 are the daughters of defendant no.1. Defendant no.4 and 5 are residing in the house of their husband. Item no.3, 4 and 16 of the suit schedule properties are their joint family properties. The suit schedule properties and other properties were purchased out of joint family income. The father of defendant no.1 cultivated item no.3 and 4 of the suit

schedule properties. Defendant no.1 acquired item no.3 and 4 of the suit schedule property by way of grant made on behalf of joint family. They and defendant no.1 planted coconut trees in item no.3 of the suit schedule property and planted arecanut trees in item no.4 of the suit schedule property. They and defendant no.1 constructed house in item no.16 of the suit schedule property. Defendant no.1 is not in exclusive possession of the joint family properties. In this regard the plaintiffs prayed to reject the application.

4. Heard arguments of counsel for defendant no.1 and counsel for the plaintiffs. Learned counsel for defendant no.1 filed written arguments. I have perused the written arguments.

5. Considering the contentions of defendant no.1 and plaintiffs, following points arise for my consideration;

1. Whether defendant no.1 has made out prima-facie case for grant of temporary injunction?
2. Whether balance of convenience is in favour of defendant no.1?
3. Whether defendant no.1 will suffer irreparable injury if temporary injunction is not granted?
4. What order?

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

Point No.1 : In the partly affirmative

Point No.2 : In the partly affirmative

Point No.3 : In the partly affirmative

Point No.4 : As per final order
For the following;

REASONS

7. **Point No.1**:- It is the case of defendant no.1 that he is the absolute owner of the suit schedule properties. He acquired the suit schedule properties through Will. The plaintiffs have no interest over the suit schedule properties.

8. Thus firstly, with regard to item no.16 of the suit schedule property is concerned, it is the case of defendant no.1 that he is residing in the said property. In this regard I have perused demand register of the said property for the year 2019-20. The said document prima-facie shows that defendant no.1 is in possession of item no.16 of the suit schedule property.

9. In the case at hand, defendant no.1 has sought to restrain the plaintiffs from disturbing his possession in the residential house. Be it stated, for the above said reasons it is prima-facie clear that

defendant no.1 is in possession of item no.16 of the suit schedule property. Further, in the present suit the issues regarding whether the suit schedule properties are the joint and ancestral properties of plaintiffs or not is the subject matter of trial. So also, the contention of the plaintiffs that the suit schedule properties were purchased out of joint family funds also requires evidence for its determination. In this circumstances, having regard to the prima-facie possession of defendant no.1 over item no.16 of the suit schedule property and considering the issues for consideration in the present suit, I am of the view that there is a prima-facie case for trial with respect to item no.16 of the suit schedule property.

10. With regard to item no.3 and 4 of the suit schedule properties are concerned, the gift deed dated:16-12-2019 prima-facie shows that the said properties have been gifted to defendant no.4 and 5. The gift deed prima-facie indicates that as on the date of the suit defendant no.1 had no ownership over the said properties. Further, defendant no.1 has not produced any documents to show that as on the date of the suit, he is in possession of item no.3 and 4 of the suit schedule properties. In this circumstances, I am of the view that defendant

no.1 has not made out a prima-facie case with regard to item no.3 and 4 of the suit schedule properties.

11. In the present case, the demand register of item no.16 of the suit schedule property prima-facie shows the possession of defendant no.1 over item no.16 of the suit schedule property. However, the gift deed dated:16-12-2019 prima-facie shows that defendant no.1 had no ownership over item no.3 and 4 of the suit schedule properties. So also, no documents have been produced by defendant no.1 to show that he is in possession of item no.3 and 4 of the suit schedule properties as on the date of the institution of the suit. In this circumstances, considering the issues for determination, application, objections and the pleadings, I am of the view that defendant no.1 has made out prima-facie case with regard to item no.16 of the suit schedule property. However, I am of the further view that defendant no.1 has not made out prima-facie case with regard to item no.3 and 4 of the suit schedule properties. Accordingly, point no.1 is answered in the partly affirmative.

12. **Point No.2:** - In the case on hand from the pleadings and the documents produced, it is prima-facie clear that there is a prima-

facie case for trial with regard to item no.16 of the suit schedule property. In these circumstances, if temporary injunction is not granted and if plaintiffs disturb defendant no.1 in his possession over item no.16 of the suit schedule property, defendant no.1 will suffer inconvenience, as defendant no.1 will be put into multiplicity of litigations. Such being the case, if temporary injunction is not granted with regard to item no.16 of the suit schedule property, the inconvenience which will be suffered by defendant no.1 is more than the inconvenience which may be caused to plaintiffs. Further, during the pendency of the suit, if plaintiffs disturb in item no.16 of the suit schedule property as alleged by defendant no.1, the very purpose of the suit will be frustrated. Since plaintiffs have an opportunity to contest the matter and get the matter decided on merits, I am of the view that balance of convenience with respect to item no.16 of the suit schedule property is in favour of defendant no.1.

13. However, in the case at hand, defendant no.1 failed to show that he is prima-facice owner and possessor of item no.3 and 4 of the suit schedule properties as on the date of the institution of the suit. In this circumstances, if, temporary injunction is granted with respect to item

no.3 and 4 of the suit schedule properties, plaintiffs will suffer inconvenience. In this circumstances, I am of the view that defendant no.1 failed to show that balance of convenience with respect to item no.3 and 4 of the suit schedule properties is in his favour.

14. In the case at hand, defendant no.1 showed that the balance of convenience with regard to item no.16 of the suit schedule property is in his favour. However, defendant no.1 failed to show that the balance of convenience with regard to item no.3 and 4 of the suit schedule properties is in his favour. Resultantly, point no.2 is answered in the partly affirmative.

15. **Point No.3**:- In the case on hand from the pleadings and the documents produced, it is prima-facie clear that there is a prima-facie case for trial with respect to item no.16 of the suit schedule property. In these circumstances if temporary injunction is not granted and if plaintiffs disturb the possession of defendant no.1 with regard to item no.16 of the suit schedule property as alleged, defendant no.1 will suffer irreparable injury and such injury cannot be compensated in terms of money, as defendant no.1 will be put into multiplicity of

litigations. Further, during the pendency of the suit if plaintiffs disturb item no.16 of the suit schedule property as alleged by defendant no.1, the very purpose of the suit will be frustrated. In these circumstances, defendant no.1 showed that he will suffer irreparable injury, if temporary injunction is not granted with respect to item no.16 of the suit schedule property.

16. However, in the case at hand, defendant no.1 failed to show that he is prima-facie owner and possessor of item no.3 and 4 of the suit schedule properties as on the date of the institution of the suit. In this circumstances, if, temporary injunction is granted with respect to item no.3 and 4 of the suit schedule properties plaintiffs will suffer injury. Further, the injury suffered by the plaintiffs cannot be compensated in terms of money. In this circumstances, I am of the view that defendant no.1 failed to show that he will suffer irreparable injury if, temporary injunction is not granted with respect to item no.3 and 4 of the suit schedule properties.

17. In the case at hand, defendant no.1 showed that he will suffer irreparable injury if, temporary injunction is not granted with regard to

item no.16 of the suit schedule property. However, defendant no.1 failed to show that he will suffer irreparable injury if, temporary injunction is not granted with regard to item no.3 and 4 of the suit schedule properties. Resultantly, point no.3 is answered in the partly affirmative.

18. **Point No.4** : - In view of reasons on point No.1 to 3 and in the interest of justice and equity, I proceed to pass the following,

ORDER

IA No.IV U/o.XXXIX Rule 1 & 2 r/w Sec.151 of CPC filed by defendant no.1 is hereby allowed in part.

Plaintiffs are hereby temporarily restrained from disturbing the possession of defendant no.1 with respect to item no.16 of the suit schedule property till the disposal of the suit.

Parties to bear their own cost.

(Dictated to the stenographer, directly on the computer typed by her corrected by me and then pronounced in the open court on this the **23rd day of April 2021**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.**