

**KARN410000742020**



**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 15<sup>th</sup> DAY OF SEPTEMBER, 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.V**

The present suit is for partition and separate possession. The plaintiffs further pray to declare the gift deeds 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.4 and 5 U/o.XXXIX rule 1 and 2 r/w. Sec.151 of CPC praying to temporarily restrain the plaintiffs from troubling in the agricultural work and from removing arecanut and coconut crops, with respect to item no.3 and 4 of the suit schedule properties, till the disposal of the suit. Defendant no.5 in her affidavit filed accompanying the application submits that the suit schedule properties are the absolute properties of defendant no.1. Defendant no.1 acquired the suit schedule properties through Will dated:09.09.1943 and other sale deeds. Item no.3 of the suit schedule property was acquired by her elder sister through gift deed

dated:26.03.2019. She acquired item no.4 of the suit schedule property under the gift deed dated:26.03.2019. She and defendant no.4 are in possession of item no.4 and 3 of the suit schedule properties respectively. Plaintiff no.1 and 2 are residing in item no.15 and 17 of the suit schedule properties. The plaintiffs are interfering in item no.3 and 4 of the suit schedule properties. They get income from item no.3 and 4 of the suit schedule properties. The plaintiffs are making loss and troubling coconut and arecanut trees. In this regard, defendant no.4 and 5 pray 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 and 4 of the suit schedule properties are their joint family properties. Some of the suit schedule properties were purchased out of joint family income. The other properties are their joint and ancestral properties. The father of defendant no.1 cultivated item no.3 and 4 of the suit schedule properties. Defendant no.1 was in possession of the said properties in view of the partition effected by his father. They, defendant no.1, 4 and 5 filed application before DC Inams. The DC Inams confirmed occupancy rights in favor of defendant no.1, on behalf of the joint family. They and defendant no.1 planted arecanut trees in item no.4 of the suit schedule property. They and defendant no.1, 4 and 5 are in joint possession of item no.3 and 4 of the suit schedule properties. Defendant no.4 and 5 are not in exclusive

possession of item no.3 and 4 of the suit schedule property. No sufficient reasons are made out to allow the application. In this regard, the plaintiffs prayed to reject the application.

4. Heard arguments of counsel for defendant no.4 and 5 and counsel for the plaintiffs. Learned counsel for defendant no.4 and 5 filed written arguments. I have perused the written arguments.

5. Considering the contentions of defendant no.4 and 5 and the plaintiffs, following points arise for my consideration;

1. Whether defendant no.4 and 5 have made out prima-facie case for grant of temporary injunction?
2. Whether balance of convenience is in favour of defendant no.4 and 5?
3. Whether defendant no.4 and 5 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 affirmative

Point No.2 : In the affirmative

Point No.3 : In the affirmative

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

### **REASONS**

7. **Point No.1**:- It is the case of defendant no.4 and 5 that defendant no.1 is the absolute owner of item no.3 and 4 of the suit schedule properties. He acquired the suit schedule properties through Will and the sale deeds. Defendant no.1 gifted item no.3 and 4 of the suit schedule

properties in their favour. Defendant no.4 and 5 are in possession of item no.3 and 4 of the suit schedule properties respectively. The plaintiffs have no interest over the suit schedule properties.

8. Be it stated, from the pleadings it is clear that there is no dispute about gift of item no.3 and 4 of the suit schedule properties in favour of defendant no.4 and 5. It is the contention of the plaintiffs that the suit schedule properties are their joint and ancestral properties. It is germane to note that it is settled position of law that the father can make a valid gift by way of reasonable provision for the maintenance of the daughter regard being had to the financial and other relevant circumstances of the family. In this regard, I am supported by the decision of the Hon'ble Supreme Court of India between Guramma Bhratar Chanbasappa and Ors. V. Mallappa Chanbasappa and Anr. cited in AIR 1964 SC 510, wherein the Hon'ble Court held thus;

**“The legal position may be summarized thus: The Hindu law texts conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition. That right was lost by efflux of time. But it became crystallized into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family.**

**By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion. It is a moral obligation and it continues to subsist till it is discharged.”**

In the case at hand, gift of item no.3 and 4 of the suit schedule properties in favour of defendant no.4 and 5 is not in dispute. Further, in view of the law laid down by the Hon'ble Apex Court, there is no embargo on the power of the father to gift the joint family properties to his daughters. Additionally, the question in regard to reasonableness of the gift is the subject matter trial, so also the question about the bindingness of the gift deeds dated:26.03.2019 on the plaintiffs. As such, in view of the law laid down by the Hon'ble Apex court, I am of the view that prima facie defendant no.4 and 5 acquired title to item no.3 and 4 of the suit schedule properties in view of the gift by defendant no.1.

9. Be it stated, the present suit is for partition and separate possession. The plaintiffs submit that the suit schedule properties are the joint and ancestral properties of themselves and the defendants. Be it stated, for the above said reasons it is held that defendant no.4 and 5 prima-facie derived title over item no.3 and 4 of the suit schedule properties in view of the gift deeds dated 26.03.2019. Further, the contentions of the plaintiffs are the subject matter of trial. That apart, the documents on record show that defendant no.4 and 5 are in respective possession of item no.3 and 4 of the

suit schedule properties as on the date of the institution of the suit. This being the case, considering the issues involved in the suit and for the above said reasons I am of the view that defendant no.4 and 5 have made out prima-facie case. Accordingly, point no.1 is answered in the affirmative.

10. **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.3 and 4 of the suit schedule property. In these circumstances, if temporary injunction is not granted and if plaintiffs remove the crops grown over the suit schedule properties and trouble the possession of defendant no.4 and 5, defendant no.4 and 5 will suffer inconvenience, as crops grown in the properties will get damaged and thereby defendant no.4 and 5 will be put into multiplicity of litigation. Such being the case, if temporary injunction is not granted with regard to item no.3 and 4 of the suit schedule properties, the inconvenience which will be suffered by defendant no.4 and 5 is more than the inconvenience which may be caused to plaintiffs. Further, during the pendency of the suit, if plaintiffs remove and damage the crops grown in item no.3 and 4 of the suit schedule properties as alleged by defendant no.4 and 5, 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.3 and 4 of the suit schedule properties is in favour of defendant no.4 and 5. Resultantly, point no.2 is answered in the affirmative.

11. **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.3 and 4 of the suit schedule properties. In these circumstances, if temporary injunction is not granted and if plaintiffs remove and damage the crops grown over item no.3 and 4 of the suit schedule properties as alleged, defendant no.4 and 5 will suffer irreparable injury and such injury cannot be compensated in terms of money, as defendant no.4 and 5 will be put into multiplicity of litigation. Further, during the pendency of the suit if plaintiffs cause trouble in the possession of defendants over item no.3 and 4 of the suit schedule properties as alleged by defendant no.4 and 5, the very purpose of the suit will be frustrated. In these circumstances, defendant no.4 and 5 showed that they will suffer irreparable injury, if temporary injunction is not granted with respect to item no.3 and 4 of the suit schedule properties. Resultantly, point no.3 is answered in the affirmative.

12. **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.V U/o.XXXIX Rule 1 & 2 r/w Sec.151 of CPC filed by defendant no.4 and 5 is hereby allowed.**

**Plaintiffs are hereby temporarily restrained from troubling in the agricultural work of defendant no.4 and 5 over item no.3 and 4 of the suit schedule properties till the disposal of the suit. The plaintiffs are further restrained from removing arecanut and**

**coconut crops from item no.3 and 4 of the suit  
schedule properties till the disposal of the suit.**

**Parties to bear their own cost.**

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **15<sup>th</sup> day of September 2021.**)

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