



**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 19th DAY OF JANUARY, 2024

O.S.No.320/2020

Plaintiff : Sri. H. Anjanappa,
S/o. Late. Hanumanthappa,
Aged about 73 years,
R/at: #7, 1st Floor, 1st Main,
'D' Cross, Maruthinagara,
Yelahanka, Bangalore – 560 064.

(By **Sri. K.Y.** Advocate)

---V/s---

Defendants : 1. Sri. N. H. Raju,
S/o. Late. Hanumanthappa,
Aged about 48 years,
R/at: Nethenahalli Village,
Kasaba Hobli, Magadi Taluk,
Ramangara District.

2. Sri. Hanumanthappa,
S/o. Late. Hanumanthappa,
Aged about 68 years,
R/at: No.12/116, Near Ramarao
Layout, Kattriguppe,
Banashankari III Stage,
Bangalore South,



3. Smt. Kempamma,
D/o. Late. Hanumanthappa,
W/o. Late. K. N. Murthy,
Since dead by her L.Rs.,

(a) Sri. Ramesh,
S/o. Late. K. N. Murthy,
Aged about 58 years,

(b) Sri. Prakash,
S/o. Late. K. N. Murthy,
Aged about 53 years,

(c) Sri. Suresh,
S/o. Late. K. N. Murthy,
Aged about 51 years,

(d) Smt. Lakshmi Devi,
D/o. Late. K. N. Murthy,
Aged about 55 years,

(e) Smt. Bhagya,
D/o. Late. K. N. Murthy,
Aged about 49 years,
R/at: Bangalore.

D4(a to e) R/at:
Koramangala Village,
Lakkenahalli Post, Soluru Hobli,
Magadi Taluk, Ramanagara District.

(f) Smt. K. N. Shobha,
W/o. N. H. Raju,
Aged about 45 years,
R/at: Nethenahalli Village,
Kasaba Hobli, Magadi Taluk,

KARN410004462020



O.S. No.320/2020(Or.)

- Ramangara District.
4. Smt. Sugunamma,
W/o. Kaverappa,
Aged about 58 years,
R/at: #1405, Aprameyanilay,
8th Main Road, 5th Cross, 5th Stage,
1st Phase, BEML Layout,
Raja Rajeshwarinagar,
Bangalore 560 098.

(D1, 3(f) & 4 by **Sri. H.N.S.** Advocate)
(D2, 3(b to e) by **Sri. A.K.H.** Advocate)

ORDER ON IA NO.III

The Defendant no.2 has filed the aforesaid application under order 39 rule 1 and 2 praying for the permission of the court to sell item no.2 of the schedule property.

2. The plaintiff has filed the aforesaid suit for the partition, declaration, permanent injunction and consequential reliefs.

3. The defendant no.2 states in his accompanying affidavit that he is the absolute owner of the item no.2 of the schedule property having acquired the same through the registered gift deed dated 26.02.2020 from his mother. He further states that the all the schedule properties

KARN410004462020**O.S. No.320/2020(Or.)**

except item no.7 of the schedule was property fallen to the share of his mother through his father after the death of his father. That he and his brother has got divided. That the first and second wife of his father was allotted shares though oral partition and mutation register entries bearing no. M.R.No.H-12/2012-13 , MR NO.27/1997-98, MR.No.T-2017-18 and MR.NO.23/2015-16 were entered. He further states that the defendant no.2 did not have any agricultural properties in his name, so the defendant no.1 executed a gift deed in favour of defendant no.2 with respect to item no.2 of the schedule property nominally. That the marriage of the daughter of Defendant no.1 was fixed on 11.02.2024. That the marriage expenses of about 20-25 lakhs was required. Hence the defendant no.2 has filed the aforesaid application praying for the permission to sell the item no.2 of the schedule property.

4. The Defendant no.1 has filed the objections to the aforesaid application and has supported the application filed by the defendant no.2 and has prayed for permitting the defendant no.2 to sell the property for the marriage of his daughter.

KARN410004462020**O.S. No.320/2020(Or.)**

5. The plaintiff has filed the objections to the aforesaid application by stating that the aforesaid application is filed with the malafide intention and is not maintainable. That the plaintiff denies the absolute right of the defendant no.2 and the oral partition. That the defendant no.2 has filed the aforesaid application instead of defendant no.1 and the facts stated in the application is concocted. That Defendant no1 on 20.05.2023 purchased a property to an extent of 1 acre and 24 guntas through a registered sale deed dated 20.05.2023. Hence the contention of the defendant no.2 cannot be accepted and has prayed for dismissal of the aforesaid application.

6. Heard Learned counsel for Defendant no.2, defendant no.1 and Plaintiff.

7. Considering the contentions of the parties, following points arise for my consideration.

1. Whether defendant No.2 has made out prima-facie case for grant of temporary injunction?

KARN410004462020



O.S. No.320/2020(Or.)

2. Whether balance of convenience is in favour of the defendant No.2?
3. Whether defendant No.2 will suffer irreparable injury if temporary injunction is not granted?
4. What order?

8. 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

9. **Point No.1**:- The defendant no.2 has filed the aforesaid application under Order 39 rule 1(a) of cpc. Order 39 rule 1(a) of CPC reads as follows:

“...The Order 39 rule 1(a) of CPC provides for the grant of temporary injunction to restrain or prevent the act for the purpose of preventing wasting, damaging, alienation, sale, removal or disposition of the property. Order 39 rule 1(a) applies to the orders relating to the Temporary



Injunctions and when the Temporary Injunctions may be granted. The usage of the word 'May' signifies that the discretion is granted to the courts while exercising the powers under Order 39 of CPC."

10. The Temporary Injunctions as such are defined under Section 37 of the specific relief act which reads as follows:

".....37. Temporary and perpetual injunctions.—(1) Temporary injunctions are such as are to continue until a specific time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908).

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff."

11. It is clear from the aforesaid definition that the orders relating to the Temporary injunction are temporary in nature and continue until a specific time or until further order of the court. The court cannot pass final orders by exercising its powers through Temporary



injunction. This is a settled principle of law. Which is reiterated in ***Shipping Corpn. of India Ltd. v. Machado Bros.***, (2004) 11 SCC 168 : 2004 SCC OnLine SC 389 at page 179

“....27. While dismissing the application IA No. 20651 of 2001 the courts below proceeded not on the basis that the original notice of termination has not become infructuous, but on the basis that the said application lacks in bonafides and if the said application is allowed the interlocutory injunction hitherto enjoyed by the plaintiff will get vacated and consequently the plaintiff will be prejudiced. The question for our consideration now is whether such ground can be considered as valid and legal. While so considering the said question one basic principle that should be borne in mind is that interlocutory orders are made in aid of final orders and not vice versa. No interlocutory order will survive after the original proceeding comes to an end. This is a well-established principle in law as could be seen from the judgment of this Court in *Kavita Trehan v. Balsara Hygiene Products Ltd.* [(1994) 5 SCC 380] wherein it is held: (SCC p. 391, para 23)

“Upon dismissal of the suit, the interlocutory order stood set aside and that whatever was done to upset the status quo, was required to be undone to the extent possible.”

KARN410004462020**O.S. No.320/2020(Or.)**

12. Order 39 rule 1(a) of CPC does not provide for the court to grant an order of temporary injunction permitting the party to the suit to sell the property. The said permission would mean to push the plaintiff to seek for the further relief as against the alienee which the court itself has permitted to alienate. This would certainly cause prejudice to the plaintiff. Further the order so passed shall be in the form of the final orders, which cannot be passed by the court.

13. The plaintiff has specifically taken the contention that the defendant no.2 does not have any interest in the schedule properties by virtue of the Memorandum of Understanding. The plaintiff has further specifically taken the contention that the defendant no.2 despite having no rights has got the gift deed dated 11.09.2018 executed illegally. One of the prayer sought by the plaintiff in the plaint is that the gift deed dated 11.09.2018 executed by the defendant no.1 in favour of defendant no.2 is not binding on the plaintiff.

KARN410004462020**O.S. No.320/2020(Or.)**

14. This prayer of the plaintiff is that the Gift deed executed by the defendant no.1 in favour of defendant no.2 should be allowed to be misused as against the interest of the plaintiff. If any order in the aforesaid I.A is passed then the plaintiff would be pushed to seek for the further remedy as against the person to whom the Defendant would sell the schedule property. For the hypothetical or for the sake of arguments the said person purchasing the property on the permission of the court is brought as a party to the aforesaid suit and if the plaintiff succeeds to prove that defendant no.2 did not have any rights in the item no.2 of the schedule property, then the person suffering the said decree would also be prejudiced by the order of this court.

15. The Plaintiff had earlier filed I.A.no.1 under order 39 rule 1 and 2 of CPC praying for restraining the defendants from temporarily alienating the suit schedule properties till disposal of the aforesaid suit. This court has already granted an order of temporary injunction restraining defendants from alienating the schedule properties by hearing the parties on 10.06.2022. The said order dated 10.06.2022 is

KARN410004462020**O.S. No.320/2020(Or.)**

still in operation. The said orders was passed on merits. The Defendant no.2 has not filed any application praying for vacation of stay or setting aside of the order dated 10.06.2022.

16. The prayer sought in the aforesaid I.A. is juxtaposition with that of the order passed restraining the Defendants from alienating the schedule property till disposal of the aforesaid suit. If any orders are passed in favour of defendant no.2 on the aforesaid application then it will be an order contradicting the orders dated 10.06.2022. Hence viewing from any angle the defendant no.2 cannot be permitted to alienate the schedule property in the form of an temporary order of injunction under Or.39 rule 1(a) of CPC. Hence, I answer point no.1 in the negative.

17. For the aforesaid reasons, I pass the following orders:

KARN410004462020



O.S. No.320/2020(Or.)

Orders

The I.A.No.3 filed by Defendant no.2 under Order 39 rule 1(a) of CPC is hereby dismissed with cost of Rs.500/-

(Dictated to the Typist directly on the computer, typed by her corrected by me and then pronounced in the open court on this the **19th day of January, 2024.**)

(Sandeep S. Reddy)
Addl. Senior Civil Judge & JMFC.,
Magadi.