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**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 4th DAY OF JUNE, 2022

O.S.No.268/2019

Plaintiff : Sri. Ramakrishnaiah @ Ramakrishna,
S/o. Late. Dummaiah @ Narasimhaiah,
Aged about 53 years,
R/at: Madapatna Village,
Tavarekere Hobli,
Bangalore South Taluk.

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

---V/s---

Defendants : 1. Sri. Venkataramanappa,
S/o. Late. Thimmanarasaiah,
Aged about 74 years,

2. Smt. Manjula,
D/o. Late. Munegowda,
Aged about 49 years,

3. Kum. Devaki,

D/o. Manjula,
Aged about 13 years,
Since minor represented by her mother
defendant no.2,

4. Smt. Rukmini,
W/o. M. N. Ramakrishnaiah,
Aged about 47 years,
5. Sri. Narasimharaju,
S/o. Venkataramanappa,
Aged about 52 years,
6. Sri. Ramaiah,
S/o. Venkataramanappa,
Aged about 45 years,
7. Sri. Muniraju,
S/o. Venkataramanappa,
Aged about 41 years,
8. Sri. Chikkanna,
S/o. Venkataramanappa,
Aged about 38 years,
9. Sri. B. Narasimharaju,
S/o. Late. Balanarasimhaiah,
Aged about 65 years,

D1 to 9 are R/at:
Sri. Manjunatha Farm House,
Gopalanagar Village,
Koluru Dakhle,
Tavarekere Hobli,
Bangalore South Taluk.

(D1, 5 to 8 by **Sri. M.R.R.** Advocate)
(D2 & 3 are placed **Exparte**)

(D4 by **Sri. M.R.** Advocate)
(D9 by **Sri. G.P.** Advocate)

ORDER ON IA NO.II

The present suit is for declaration and permanent injunction.

2. The present application has been filed by the plaintiff U/O. XXXIX Rule 1 and 2 of CPC praying to temporarily restrain the defendants from alienating the suit schedule properties. It is the case of the plaintiff that he is the owner and possessor of the suit schedule properties. The suit schedule properties originally belonged to one Govindappa. The said Govindappa acquired item no.1 of the suit schedule property vide grant and further acquired item no.2 of the suit schedule property vide *Hakkupatra*. Govindappa died on 13.05.2004. Govindappa and his wife Gangamma have no issues. They fostered him since his childhood. He helped Govindappa and Gangamma to construct house. He took care of Govindappa and Gangamma. As such, Govindappa executed Will dated: 13.07.1994 in his favour with respect to suit schedule properties. Defendant no.1 is the attesting witness to the said Will. Subsequent to the death of Govindappa, he became the owner of the suit schedule properties. After the death of Govindappa, the relationship

between him and Gangamma got strained. He started residing separately. Subsequently, defendant no.1 created a fraudulent Will dated: 12.03.1998 and instigated Gangamma to file suit bearing O.S.No.184/1997 against him. After the death of Gangamma, he came on record as her legal representative. In the said suit the court held that he proved the execution Will dated: 13.07.1994. Thereafter, defendant no.1 preferred appeal bearing R.A.No.37/2015, wherein he was shown as civilly dead. The defendants played fraud on the court by including one Manjula, who is not related to him, and compromised the appeal. Later on, the defendants created sale deed dated: 26.09.2016 in favour of defendant no.9. Defendant no.2 also executed consent deed, wherein it is stated that he left the house 8 years ago and they do not know his whereabouts. In the said circumstances, he was in judicial custody for three years. At the time of passing the judgement in was present. Counsel for defendant in O.S.No.184/1997 obtained the documents and did not hand over the original documents to him. The defendants cheated him and played fraud on the court and illegally compromised the appeal.

The defendants have no rights, title and interest over the suit schedule properties. The defendants are trying to alienate the suit schedule properties. The revenue documents of the suit schedule properties are standing in the name of his ancestors. In this regard, the plaintiff prays as above.

3. Defendant no.9 in his objections denied the plaint averments. Defendant no.9 contended that the suit is barred by Law of Limitation. He is the owner of item no.1 of the suit schedule property. He purchased item no.1 of the suit schedule property from defendant no.1 and his family members vide sale deed dated: 26.09.2016. Prior to execution of sale deed, defendant no.1 and the wife of plaintiff executed agreement of sale dated: 02.02.2016 in his favour and also executed power of attorney in his favour. He was also executed *swattu swadina pramana patra* dated: 10.03.2016. Defendant no.1 attested it and the second wife of plaintiff and his daughter Kumari Devaki executed Deed of Acceptance. He is a bonafide purchaser of item no.1 of the suit schedule property. The plaintiff is unconcerned and has no locus standi to question the sale deed and the

documents. In this regard, defendant no.9 prayed to reject the application.

4. Heard arguments of counsel for plaintiff and defendant no.9. Counsel for defendant no.1, 4 to 8 adopted the arguments of defendant no.9.

5. 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?

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

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|------------|---|--|
| 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 the plaintiff that he is the owner and possessor of the suit schedule properties. The suit schedule properties originally belonged to one Govindappa. Govindappa and his wife Gangamma have no issues. As such, Govindappa and Gangamma fostered him. He took care of them. Thus, Govindappa bequeathed the suit schedule properties in his favour vide Will dated: 13.07.1994. Govindappa died on 13.05.2004. After his death, he became the owner of the suit schedule properties.

8. In this regard, I have perused the written statement of defendant no.9 and defendant no.1. In the case at hand, the written statement of defendant no.1 has been adopted by defendant no.5 to 8. On perusal of the written statements, it is clear that there is no dispute about the ownership of Govindappa with respect to suit schedule properties at an undisputed point of time.

9. Having said this, the plaintiff submits that Govindappa bequeathed the suit schedule properties in his favour. On the contrary, defendant no.9 claims title to item no.1 of the suit schedule property through sale deed executed by defendant no.1. In this regard, on perusal of the sale deed dated: 26.09.2016, it is prima-facie clear that item no.1 of the suit schedule property was bequeathed to the plaintiff. In other words, from the sale deed it is prima-facie ostentatious that the plaintiff was the owner of item no.1 of the suit schedule property.

10. Defendant no.9 contended that defendant no.1 executed sale deed dated: 26.09.2016 in his favour with respect to item no.1 of the suit schedule property. That apart, prior to the sale deed defendant no.1 and wife of the plaintiff executed agreement of sale and power of attorney in his favour. Possession of item no.1 of the suit schedule property was delivered to him vide *Swattu swadina pramana patra* dated: 10.03.2016. In this regard, defendant no.9 also produced various documents. I have

perused the documents produced by defendant no.9. Be it noted, in the case at hand the ownership of Govindappa with respect to the suit schedule properties at an undisputed point of time is not in dispute. Further, the sale deed executed in favour of defendant no.1 prima-facie shows that the plaintiff was bequeathed item no.1 of the suit schedule property. This being the case, I am of the view that the above said contentions of defendant no.9 are the subject matter of evidence, which can be decided during course of trial, so also, the documents produced by defendant no.9.

11. Be it stated, the present suit is one for declaration and permanent injunction. Further, for the above said reasons it is prima-facie clear that the suit schedule properties were owned by Govindappa at an undisputed point of time. So also, the sale deed dated: 26.09.2016 prima-facie shows that the plaintiff was bequeathed item no.1 of the suit schedule property. In these circumstances, having regard to the issues that are required to be answered in the present suit, I am of the view that there is a

prima-facie case for trial. In this view of the matter, considering the application, pleadings and materials on record, I am of the view that the plaintiff has made out prima-facie case. Accordingly, point no.1 is answered in the 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. In these circumstances, if temporary injunction is not granted and if defendants alienate the suit schedule properties as alleged, the plaintiff will suffer inconvenience, as the plaintiff will be put into multiplicity of litigation. Such being the case, if temporary injunction is not granted, the inconvenience which will be suffered by the plaintiff is more than the inconvenience which may be caused to the defendants. Further, during the pendency of the suit, if the defendants alienate the suit schedule properties as alleged by the plaintiff, the very purpose of the suit will be frustrated. Since the defendants 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 suit schedule properties is in favour

of the plaintiff. Resultantly, point no.2 is answered in the affirmative.

13. **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 suit schedule properties. In these circumstances, if temporary injunction is not granted and if the defendants alienate suit schedule properties as alleged, the plaintiff will suffer irreparable injury and such injury cannot be compensated in terms of money, as the plaintiff will be put into multiplicity of litigation. Further, during the pendency of the suit if the defendants alienate suit schedule properties as alleged by the plaintiff, the very purpose of the suit will be frustrated. In these circumstances, the plaintiff showed that she will suffer irreparable injury, if temporary injunction is not granted with respect to suit schedule properties. Resultantly, point no.3 is answered in the affirmative.

14. **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.II U/o.XXXIX Rule 1 & 2 of CPC
filed by the plaintiff is hereby allowed.**

**The defendants, their agents or anybody
claiming through them are hereby temporarily
restrained from alienating 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 **4th day of June, 2022.**)

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