

KATK300008392020



**IN THE COURT OF THE SENIOR CIVIL JUDGE
AND JMFC., AT GUBBI.**

Dated this the 22nd Day of February 2022.

**Present: Undi Manjula Shivappa,
B.Sc.LLM.,
Senior Civil Judge.**

O.S.69/2020

Plaintiffs : Rudresh & another

V/s

Defendants: Smt. Shanthakumari & Others

I.A.No.I/2021

Applicants: Rudresh & another

V/s

Opponents: Smt. Shanthakumari & Others



ORDER

The applicants/plaintiffs have filed this I.A under Order XXXIX Rules 1 and 2 of CPC seeking to grant order of temporary injunction restraining defendants No.1 to 3, their agents, servants or anybody from alienating the suit schedule properties pending disposal of the suit.

2. In the affidavit, the applicant has stated that he and other plaintiff have filed this suit for partition and separate possession in respect of suit schedule properties. It is averred that suit schedule properties are the ancestral properties of plaintiffs and defendant No.1. The mother of plaintiffs namely Basavarajamma had got 3 children like plaintiffs and defendant No.1. By taking advantage of revenue entries standing in the name of defendant No.1, she and her daughters are trying to alienate the suit schedule Item No.1 and 2 properties in favour of defendants No.5 to 7. It is



averred that plaintiff has made out prima face case and balance of convenience lies in their favour and if an order of temporary injunction is refused, much hardship and injustice will cause to the plaintiffs. Hence the plaintiffs prayed to allow the I.A.

3. The defendants No.1 to 3 filed memo stating that contents of written statement may be treated as objection to I.A. No.1. As per this defendant suit Sy.No.24 of Konanakallu village was inam land and one Gurubasavaiah, the grandfather of defendant No.1 was the occupant of the same and after the period of occupation said land has been re-granted to Gurubasavaiah. He married one Puttamma and begotten only one daughter Basavarajamma. After demise of Gurubasavaiah, Basavarajamma being the only daughter had succeeded to the suit property. Out of this suit property some portion of the property has been acquired for the formation of



Hemavathi channel by the government which runs in the middle of the property and thus Sy.No.24 has been phoded as Sy.No.24/1, 24/2, 21/3. Like this Basavarajamma was the absolute owner of the suit schedule property under Sec.14 of Hindu Succession Act.

4. It is further submitted that Basavarajamma being the absolute owner of the suit item No.1 and 2 property out of love and affection gifted the suit property in favour of defendant No.1 under registered gift deed dated 30.08.2012 and the gift was accepted by defendant No.1. On the basis of said gift deed mutation has been effected in the name of defendant No.1. Later defendants No.5 to 7 approached defendant No.1 to purchase suit item No.2 property and entered into registered agreement to sell suit item No.2 property dated 24.07.2020 with stipulation of 3 months.



5. It is further submitted that one Shambanna S/o Rangappa and Shivajirao S/o Krishnoji rao approached defendant No.1 for the formation of trust of Basavanna temple and took defendant No.1 to Sub registrar office and get registered the documents and defendant was under impression that the document that has been registered is a trust deed and later after issuance of summons of the court, defendant No.1 came to know that the document has been registered is styled as gift agreement and same has been got executed by playing fraud upon defendant No.1. It is submitted that gift should be unconditional and there cannot be agreement to execute a gift. The suit item No.3 is the only property available for partition and defendant No.1 is ready to pay necessary court fee to allot her legitimate 1/3rd share in the same. Hence the defendants No.1 to 3 prayed to reject the I.A.



6. I have heard the arguments on both side and perused record.

7. The following points arise for my consideration:

- 1) Whether the applicant has made out prima-facie case for granting an order of Temporary injunction?
- 2) Whether the balance of convenience lies in favour of applicant?
- 3) Whether the hardship and injury will cause to the applicant, if an order of temporary injunction is refused?
- 4) What order?

8. My answers to the above points are as follows:

Points No.1-3 : In the Affirmative,

Point No.4 : As per final Order, for the following:-



REASONS

9. **POINTS No.1 to 3:** All these points are taken up together for common discussion to avoid repetition of facts and evidence, as they are based on same set of facts and law.

10. The application under Order XXXIX Rule 1 and 2 of CPC has been filed by the plaintiff seeking restraining defendants No.1 to 3, their agents, servants or anybody claiming under them from alienating the suit schedule properties in favour of 3rd party in any mode or manner, till final disposal of the suit. After hearing on both the parties and perused the pleadings of both the parties it is very clear that plaintiffs No.1 and 2 and defendant No.1 are the children of Basavarajamma and Chikkarudrappa. Defendant No.1 is the younger sister of plaintiffs No.1 and 2, this relationship is not in dispute. Admittedly Gurubasavaiah is the grandfather of defendant No.1 and the suit schedule properties originally belongs to



Gurubasavaiah it is also admitted fact. The Gurubasavaiah having only one female issue i.e., Basavarajamma the mother of plaintiffs and defendant No.1 it is also admitted fact. The mother of plaintiffs and defendant No.1 succeeded the suit schedule properties through her father and mother, since she is the only daughter of their parent, hence it cannot be said as a ancestral property and ancestral property means the property inherited that of common male ancestor with his lineal descendants in the male line four degrees counting from and inclusive of such ancestor. Admittedly here is the property inherited by the mother of plaintiffs and defendant No.1 through her father and mother and that property owned by their grandfather by way of grant from the government. Later that has been re-granted to the grand father of plaintiffs and defendant No.1. It means their great grandfather has not owned this property, for the first time this property owned by



grandfather of plaintiffs and defendant No.1. Moreover it is also admitted fact that their grandfather has no male issues, he had only female issue i.e., mother of plaintiffs and defendant No.1. Hence this property cannot be said as a ancestral property, but if this Basavarajamma died intestate the plaintiffs having legitimate share in the suit schedule properties.

11. On the other hand, defendant No.1 produced one registered gift deed alleged to have executed by her mother Basavarajamma in respect of suit schedule properties. This registered gift deed has been seriously objected by plaintiffs. No doubt, this is the registered gift deed and recital of gift deed reveals that this Basavarajamma had executed the gift deed in favour of her daughter i.e., defendant No.1 on the account of love and affection, but it has to be noted here that plaintiffs No.1 and 2 are also the own sons of deceased Basavarajamma



why she had excluded her own sons and bequeathed her whole property to her daughter only is in question. Mere production of gift deed itself is not a conclusive proof. Moreover here the executant i.e., donar of the gift deed Basavarajamma is no more. Now it is the burden of defendant No.1 to prove the alleged gift deed unless she proves the alleged gift deed it cannot be said defendant No.1 is the absolute owner of the suit schedule properties. Admittedly this defendant No.1 at her written statement stated suit item No.3 is liable for partition. This suit item No.3 is also a part and parcel of the suit item No.1 and 2 property, after phode they have been divided like this and moreover whether deceased Basavarajamma has executed the gift deed in respect of suit item No.1 and 2 properties voluntarily in favour of defendant No.1 or not cannot be decided at this stage. Any how for the purpose of trial the suit schedule properties has to be



preserved. Further defendant No.1 herself admitted that she has entered into the agreement of sale in respect of suit item No.1 property it means she is going to alienate the suit schedule properties, if she succeeded to alienate the suit schedule properties, the very purpose of filing the suit will not survive it creates 3rd party interest on the suit schedule properties. It will leads to multiplicity of litigations. Hence for the ends of justice it is just and necessary to allow the application.

12. In view of the reasons stated above the plaintiffs have made out prima facie case and balance of convenience also lies in their favour, if temporary injunction is granted, more hardship will cause to the plaintiffs, as compared to the defendants. Hence Points No.1 to 3 are answered in the Affirmative.



13. **POINT No.4:** For the aforesaid reasons and findings on Points No.1 to 3, I proceed to pass the following:-

ORDER

I.A. No.I filed under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

Considering the relationship between the parties no order as to cost.

An order of temporary injunction is granted by restraining defendants No.1 to 3, their agents, servants or anybody claiming under them from alienating the suit schedule properties to any person in any manner, till final disposal of the suit.

(On my dictation transcribed, typed by the Stenographer and print out taken by her, corrected and then pronounced by me in the Open Court on this the 22nd Day of February 2022.)

Sd/-
(UNDI MANJULA SHIVAPPA)
Senior Civil Judge & JMFC.,
Gubbi.