



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC.,
GUBBI.**

Dated on this the 25th day of April, 2024

PRESENT: SMT. POORNIMA .K. YADAV,

B.A.LL.B., LL.M.,

**Addl. Sr. Civil Judge & JMFC,
Gubbi.**

ORIGINAL SUIT NO. 194/2023

Plaintiff/s : D.Brahmarayappa & Another
(By Sri. C.R.B., Adv.)
Vs.

Defendant/s: D. Susheelamma & Others.
(D1 by Sri V.J.K., Adv.)
(D2 & 18 by Sri H.M.H, Adv.)
(D19 by Sri H.M.G. Adv.,)
(D4 to 8, 10 to 17 Exparte)
(D3 Dead)

PARTIES TO I.A.NO.II

Applicant / Plaintiff : D.Brahmarayappa
Vs.

Opponents/Defendants : D. Susheelamma and others

Provision under the Application	Under Order 39 Rule 1 and 2 of CPC
Application Relief sought for	Temporary injunction restraining defendants from alienating the suit schedule properties.
The date of the application is filed Interlocutory Application Number	09.10.2023
Interlocutory Application Number	II
Date of objection filed by the Respondent	08.04.2024
Date of order passed	25.04.2024

Sd/-

(POORNIMA K. YADAV)
Addl. Senior Civil Judge &
JMFC, Gubbi.



ORDERS ON IA NO.II

The Plaintiffs through their counsel filed this application U/O 39 Rule 1 and 2 of CPC restraining the defendant No.2 and 18 from alienating the suit schedule properties, pending disposal of the suit.

2. The application is accompanied with the affidavit of the of the Plaintiff No.1, wherein it is stated that, the present suit is for partition and separate possession. It is stated that the father of the plaintiff No.1 Devarajappa acquired the suit schedule properties and they are his absolute properties. The said facts is upheld by the judgment and decree of this Court as well as before the Hon'ble Appellate Court, Tumkur. From the said judgments and decrees it is clear that the defendant No.2 is not the absolute owner of Item No. 1 to 8 of the suit schedule properties and the defendant No.2 created Gift Deed in favour of her husband i.e. the defendant No.18 on 01.02.2023 with regard to the suit schedule properties to defraud the share of the plaintiffs. After executions of the Gift deed, the defendant No.18 has managed to obtained Katha and Pahani of Item No. 1 to 4, 7 and 8 of the suit schedule properties into his name. The defendant No. 2 and 18 are attempting to alienate the suit schedule properties. The prima-facie case and balance of



convenience is in favour of the plaintiffs. Hence, sought to allow the application.

3. On the other hand, the counsel for the defendant No.2 and 18 filed objections and contended that the application is not maintainable and it is liable to be rejected. It is contended that the present application is filed only to harass the defendant No.2 and 18. It is contended that the defendant No. 2 and 18 are not in physical possession and enjoyment of Item No. 5 and 6 of the suit schedule properties and Item No.5 is standing in the name of defendant No.1 and Item No.6 is standing in the name of defendant No. 7 to 10. Item No. 7 is still standing in the name of Devarajappa and the defendants are in its possession. The defendants are not having any intention to alienate Item No. 1 to 4, 7 and 8 of the suit schedule properties. Hence, sought to reject the application.

4. Heard the counsel for the plaintiff and defendant No.2 and 18.
5. Upon hearing both the counsel and on perusal of the materials available on record, the points that arise for my consideration are;

1. ***Whether the plaintiffs have made out a prima facie case in their favour ?***



2. *Whether the plaintiffs will be put to irreparable loss ?*
3. *Whether the balance of convenience lies in favour of the plaintiffs?*
4. *What order?*

6. My findings to the above points are as under:

Point No.1: *In the Affirmative*

Point No.2: *In the Affirmative*

Point No.3: *In the Affirmative*

Point No.4: *As per the final order,
for the following:*

REASONS

7. **POINT NO.1:** This suit is filed seeking relief of partition and separate possession of plaintiffs 5/28th share the suit schedule properties on the ground that the said properties belonged to father of the plaintiff No.1 by name Devarajappa.
8. The plaint averments discloses that in OS No. 26/1957 pertaining to joint family properties of Devarajappa which ended in compromise Smt. Maduramma i.e. the daughter in law of Devarajappa relinquished her rights over the joint family properties under the said compromise dated 30.01.1962. Further, son of Devarajappa from his second wife by name A.D. Rajanna executed Registered Release Deed dated 24.09.1952 in respect of joint family properties in favour of his father



Devarajappa. After the death of said Devarajappa, his wife Jayamma and his children became the Co-Owners of the suit schedule properties. Further, the plaintiff No.1 and his brother filed OS No. 3/2009 in respect of Item No.1 to 7 and Item No.9 of the suit schedule properties which came to be decreed against which appeal was preferred in RA No. 155/2012 wherein the judgment was set aside. The said judgment was preferred in appeal before the Hon'ble High Court of Karnataka in RSA No. 478/2020 which came to be dismissed by upholding the judgment of first appellate Court. Hence, the plaintiff and the defendant No. 1 to 7 being the Co-owners are in joint possession and enjoyment of the suit schedule properties but the defendant No.2 by Misrepresenting the facts executed Gift Deed in favour of her husband i.e. the defendant No.18 on 01.02.2023.

9. The written statement of the defendant No.2 and 18 shows that they denied the plaint averments and contended about partition deed dated 15.06.1955 in respect of Item No. 1 to 8 of the suit schedule properties. It is further contended that the plaintiff and the defendants are in joint possession and enjoyment of the suit schedule properties. The defendant No. 2 and 18 denied proceedings of OS No. 3/2009, RA No. 155/2012 and RSA No. 478/2020.



10. At this juncture, I would like to place reliance on the ratio of the Hon'ble High Court of Rajasthan in **AIR 2003 RAJ 21 between Sukka Singh Vs. Mahal Singh**, wherein it is held that,

“ While considering the question of prima facie case, it is not to be confused with prima facie title. What is required is that the plaintiff has to show that he has bonafide raised a substantial question, which needs to be adjudicated at the trial of the suit.”

11. Hence, it is clear that prima facie case means showing that there is dispute between the parties which has to be decided in a full fledged trial. The said pleadings of the parties shows that the plaintiffs are claiming their rights over the suit schedule properties stating that they are the self acquired properties of father of plaintiff No.1 Devarajappa. The said fact is denied by defendant No. 2 and 18 as they have denied the entire earlier suit proceedings. The said suit proceedings relates to the facts of this case on the basis of which the plaintiffs have pleaded rights over the suit schedule properties. This shows that there is dispute between the parties regarding the nature of the suit schedule properties which require adjudication by way of trial and which shows existence of prima facia case for trial.



Accordingly, Point No.1 is answered in the Affirmative.

- 12. POINT NO.2 & 3:** These points are taken up for discussion together as they are inter related to each other.
- 13.** The plaintiff through this application sought for an order of Temporary injunction restraining the defendant No.2 and 18 or anybody claiming through them from alienating the suit schedule properties till disposal of the suit.
- 14.** Order 39 Rule 1 of CPC, provides for grant of Temporary Injunction when the subject matter of the suit is in the danger of being alienated, damaged or wasted by the defendant for the purpose of staying and preventing such alienation, damage or wastage, until the disposal of the suit.
- 15.** The objections filed by the defendant No. 2 and 18 shows that they were admitted that they are in the possession and enjoyment of Item No. 1, 2, 3, 4 , 7 and 8 of the suit schedule properties.
- 16.** It is the argument of the counsel for the defendant No. 2 and 18 that some of the properties are jointly standing in the name of the plaintiffs and the defendants as such, temporary injunction cannot be granted only against the defendant No. 2 and 18 in respect of all the suit schedule properties.



- 17.** The affidavit of the plaintiff No.1 accompanying the application shows that the defendant No.18 on the basis of the Gift deed has managed to obtained Katha and Pahani of Item No. 1 to 4, 7 and 8 of the suit schedule properties in his name after the execution of the Gift Deed. The said fact corroborates with the contention taken by the defendants. Further, it is the apprehension of the plaintiffs that the defendant No.2 and 18 are trying to alienate the suit schedule properties.
- 18.** The Gift deed is not on record to ascertain the properties gifted by the defendant No.2 to the defendant No.18. Even the written statement of the defendant No.2 and 18 does not disclose the facts about the Gift Deed. In the said circumstances, as the apprehension of the plaintiffs is disclosed through an affidavit whereas the contention of the defendant No.2 and 18 is only on the basis of objection, I feel it is just and proper to order for grant of Temporary Injunction with regard to alienation of the suit schedule properties as it is necessary to maintain the suit schedule properties as it is till disposal of the suit which will keep the rights of the plaintiffs and the defendants maintained until the suit is disposed. In between if there are any third party transactions, it will effect the rights of the parties to the



suit as well as third party which cannot be compensated in terms of money. As such the balance of convenience tilts more in favour of the plaintiffs than the defendant No. 2 and 18. Accordingly, Point No. 2 and 3 are answered in the Affirmative.

- 19. POINT NO.4:** In view of the reasons assigned above, I proceed to pass the following;

ORDER

The IA No.2 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendant No.2 and 18 or anybody claiming through them are hereby temporarily restrained from alienating the suit schedule properties till disposal of the suit.

Parties to bear their own costs.

(Directly dictated to the stenographer on the computer, printed through steno, corrected by me and then pronounced in the open court on this the **25th day of April, 2024**)

Sd/-
(POORNIMA. K. YADAV)
Addl. Sr. Civil Judge & JMFC,
Gubbi.