

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

**Present: Smt. Vinutha D.S., B.Sc.(seri)., LL.B.,
Prl. Civil Judge & JMFC.,
Gubbi.**

Dated on this 14th day of February-2024

O.S.No.207/2023

- Plaintiffs:** 1. Mangalamma W/o late Shankarappa,
Aged about 45 years,
2. Bhojaraju S/o late Shankarappa,
Aged about 27 years,
3. Bharathi.B.N D/o late Shankarappa,
Aged about 25 years,

All are R/o Byadagere Village,
Kasaba Hobli, Gubbi Taluk.

(By Sri.N.S., Advocate)

V/s

- Defendants:** 1. Yogeesha S/o late Ramaiah,
Aged about 65 years,
R/o Byadagere Village,
Kasaba Hobli, Gubbi Taluk.
2. Leela.E.Y D/o Yogeesha,
S/o Mruthyunjaya,
Aged about 40 years,
R/o Nettakunte Village,
Kasaba Hobli, Gubbi Taluk.

(By Sri.K.R.K., Advocate.,)

**PARTIES TO IA No.1****APPLICANT** : Mangalamma – Plaintiff No.1**V/S****OPPONENT** : Yogeesha – defendant No.1**ORDERS ON I.A No.1 U/O.XXXIX RULE 1 AND 2 OF THE CPC**

The plaintiff No.1 has filed the application under order 39 Rule 1 and 2 of CPC praying this court to restrain the defendant No.2, her agents or anybody acting on her behalf from alienate the suit schedule property till disposal of the suit.

2. The suit schedule properties are described as under:

1. Land bearing Sy.No.154/3B totally measuring 0-21 guntas situated at Amanikere Village, Kasaba Hobli, Gubbi Taluk.

2. Land bearing Sy.No.154/3A totally measuring 0-15 guntas situated at Amanikere Village, Kasaba Hobli, Gubbi Taluk which are bounded by;

East: land of Rangachar
West: land of Shanthappa
North: Canal
South: Canal

3. In the affidavit annexed to the application, plaintiff No.1 has stated that, one Lingappa had two sons namely Chikkakalaiah and Ramaiah and both are no more. The said



Chikkakalaiah had only son by name Ganganna who is also no more. The Said Ganganna had only son by name Shankarappa and he is also more. The plaintiff No.1 is the wife of late Shankarappa and plaintiffs No.2 and 3 are their children. Further, Ramaiah had a wife by name Revakka. Both are no more and they had only son by name Yogeeshha (defendant No.1) and defendant No.2 is the daughter of defendant No.1.

Further, it is averred that, the plaintiffs and defendants together constitute Hindu joint family and suit schedule properties are their ancestral and joint family properties and they are in joint possession of the same. Originally the suit schedule properties belonged to propositus Lingappa. After his death, Ramaiah was the manager of the joint family. The said Ramaiah at the back of other joint family members had got the revenue document of the suit schedule property in his name on pavathi varsu. Later, the revenue documents were changed into name of Revakka W/o Ramaiah on pavathi varsu. After her death, the defendant No.1 has got changed the revenue documents in his name. Further, the defendant No.1 to defeat the rights of plaintiffs in the suit schedule properties has executed registered Gift deed in favour of defendant No.2 in respect of suit schedule properties. The defendants are misusing the joint family income. It is averred that defendant No.2 is trying to alienate the suit schedule properties to third persons. Hence, they pray to allow the application and it is also



stated that if defendant No.2 alienate's the suit schedule properties, then plaintiffs will be put to irreparable injury.

4. On service of emergent notice and suit summons, defendants No.1 and 2 appeared through their counsel and filed written statement and filed memo to treat their written statement as objection to IA.No.1. The defendants in their written statement have denied all thte plaint averments. It is their specific case that once Chikkakalaiah @ Kalaiah of Byadigere Village had 2 children namely Ganganna and Shivanna. The said Ganganna had two children namely Indramma and Shankarappa. The said Shankarappa's wife is plaintiff No.1 and plaintiffs No.2 and 3 are children of Shankarappa. Further, the said Shivanna w/o Chikkakalaiah @ Kalaiah had two daughters by name Puttamma and Nanjundamma.

The defendants have explained their genealogical tree as one Idakanahalli Thimmanna had four children by name Ramaiah, Basavaiah, Nanjaiah and Ganganna. The said Ramaiah had a wife by name Revakka and they had 6 children by name Puttamma, Yogeeshaiah (defendant No.1), Sharadamma, Mahesha, Girijamma and Bhojaraju. The defendant No.1 had two children by name Leela (defendant No.2) and Sathish.

The suit schedule properties originally belonged to



Chikkakalaiah and on 06.01.1944 he has gifted the suit schedule properties to mother of defendant No.1 Revakka W/o Ramaiah and she was the absolute owner of it. After her death, the defendant No.1 had succeeded the suit schedule properties. On 22.10.2016, the defendant No.1 has executed registered Gift deed in favour of defendant No.2 in respect of the suit schedule properties. The defendant No.2 is the absolute owner in possession of the suit schedule properties. The defendants have seriously disputed the relationship with plaintiffs and also the nature of suit schedule properties. They also averred that the plaintiffs by giving false genealogical tree are trying to grab the suit schedule properties belonging to defendant No.2. Hence, they pray to reject the application.

5. Heard both sides. Perused materials on record.

6. After going through the pleadings and other materials available on record, the following points arise for my consideration.

- 1.** Whether the plaintiffs have made out prima facie case ?
- 2.** Whether the plaintiffs have balance of convenience in their favour?
- 3.** Whether irreparable loss or injury would be caused to plaintiffs if temporary injunction is not granted?



4. What Order?

7. for the above points my answer 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 final order for the Following reasons:

REASONS

8. Points No.1 to 3:-____Prima-facie case means an arguable case made out from the allegation and averments made in the pleadings in support of the documents produced by the party concerned. Among the trios as a guiding factor 'balance of convenience and irreparable loss to the defendants also plays a vital role. Grant of injunction is in the discretion of the court and if such discretion has to be exercised in favour of the applicant/defendants, it is to be proved to the satisfaction of the court that there is prima-facie case on their side, balance of convenience leans on their side and unless the opponents/plaintiff are restrained by an order of injunction, an irreparable loss or damage would be caused to plaintiff during pendency of the suit. Let us examine the case on hand keeping these trio factors into consideration.

9. At this juncture, the plaintiffs have drawn attention of this Court to the documents like notarized genealogical tree, RTC of Sy.No.154/3B (i.e., suit item No.1) for the year



2001-02. This document depicts tha 21 guntas is standing in the name off defendant No.1 and column 10 entry mentioned as MR.121/1990-91 ಪೌತಿ. RTC of suit schedule property Sy.No.154/3A (i.e., suit schedule property No.2) for the year 2001-02 depicts that 15 guntas standing in the name of defendant No.1 and at column 10 entry mentioned as MR.12/1990-91. RTC of suit schedule property of the year 2022-23 shows that suit schedule properties are standing in the name of defendant No.2 and column 10 entry shows mode of acquisition as MR.H26/2016-17 ದಾನ.

10. The defendants have produced the documents like copy of Gift deed dated:06.01.1944 ದಿ On perusal of said document it appears that, one Chikkakalaiah has executed Gift deed in favour of one Revakka W/o Ramaiah. Further for better understanding I would like to extract the properties described in the said document as;

"ದಾನದ ಸ್ವತ್ತಿನ ಸಪೀಲು ಇದೇ ಗುಬ್ಬಿ ತಾಲ್ಲೂಕು ಅಮಾನಿಕೆರೆಗೆ ಸೇರಿದೆ ನನ್ನ ಖಾತೆ ನನ್ನ ಅನುಭವದ ರೀ ಸರ್ವೆ ಒಂದುನೂರ ಐವತ್ತನಾಲ್ಕನೆ ಮೂರನೆ ಪೋಡಿನಲ್ಲಿ ಎಕರೆ ಇಲ್ಲಾ ಗುಂಟೆ ಇಷ್ಟತ್ತಾರು ಆಕಾರ ಮೂರು ರೂಪಾಯಿ ಹದಿನಾಲ್ಕಾಣೆ ಉಲ್ಲದರಲ್ಲಿ ಗಂಗಯ್ಯನಿಗೆ ಕ್ರಯಕ್ಕೆ ಕೊಟ್ಟಿರುವ ಉತ್ತರ ಭಾಗದ ಅರ್ಧ ಗದ್ದೆ ಜಾಗ ಉಳಿಯುವ ದಕ್ಷಿಣ ಭಾಗದ ಅರ್ಧ ಗದ್ದೆಗೆ ಎಕರೆ ಇಲ್ಲಾ ಗುಂಟೆ ಹದಿನೆಂಟು ಆಕಾರ ಒಂದು ರೂಪಾಯಿ ಹದಿನೈದಾಣೆ ಉಲ್ಲದಕ್ಕೆ ಚೆಕ್ಕುಬಂದಿ ಪೂರ್ವಕ್ಕೆ ಶಿದ್ದಯ್ಯನ ಗದ್ದೆ, ಪಶ್ಚಿಮಕ್ಕೆ ಬಸವಲಿಂಗದೇವರ ಗದ್ದೆ, ಉತ್ತರಕ್ಕೆ ಗಂಗಯ್ಯನಿಗೆ ಕ್ರಯಕ್ಕೆ ಕೊಟ್ಟಿರುವ ಇದೇ ಪೈಕಿ ಗದ್ದೆ ದಕ್ಷಿಣಕ್ಕೆ ರಾಯಗಟ್ಟಿ ಈ ಮಧ್ಯೆ ಇರುವ ಸ್ವತ್ತು ಒಯಿ ಈ ನಂಬರಿಗೆ ಅಳತೆಯನ್ನು ಗಂಗಯ್ಯನ ಕ್ರಯ ಪತ್ರದಲ್ಲಿ ಪಾವತಿಮಾಡಿರುತ್ತೆ".



Another document produced by the copy of Gift deed executed by defendant No.1 to defendant No.2 which shows that in Sy.No.153/3A measuring 15 guntas and Sy.No.154/3B measuring 21 guntas is Gifted in favour of defendant No.2.

11. On perusal of materials on record show that revenue documents of suit schedule properties are standing in the name of defendant No.2 on strength of registered Gift deed dated:06.01.1944. The plaintiffs claim that themselves and defendants together constitute the joint family properties and suit schedule properties are their ancestral and joint family properties. But the defendants disputed the relationship with plaintiffs and contended that plaintiffs are utter strangers to the defendants. Hence, they disputed the nature of the suit schedule properties. They have taken the specific contention that one Chikkakalaiah of Byadagere Village had Gifted the suit schedule properties to the mother of defendant No.1 Revakka under registered Gift deed dated:06.01.1944 and so she was absolute owner of the suit schedule properties. After her death, the defendant No.1 succeeded the suit schedule properties and he Gifted it to his daughter defendant No.2 on 22.10.2016. However, document the copy of Gift deed dated:06.01.1944 produced by defendants does not support their case. Because as per



the said document only 18 guntas in Sy.No.154/3 is Gifted to Revakka. Therefore, the plaintiffs have made out prima-facie case in their favour. There are certainly the elements which needs to be decided by holding trial. The fact of relationship; nature of property and acquisition of suit schedule properties by defendants all needs to be decided as prima-facie the materials show an arguable cause. Therefore, this Court feels the balance of convenience lies on plaintiffs' side. Presently the suit schedule properties are to be preserved till disposal of the suit in its own nature and it is very important. If the defendant No.2 alienate's the suit schedule properties to third person, it not only leads to multiplicity of proceedings but also affect right of parties i.e., plaintiffs. Therefore, this is fit case to exercise the discretion and to grant temporary injunction. No hardship will be caused to defendant No.2 if injunction is granted. On other hand if rejected, it causes hardship to plaintiffs. Therefore, this Court answers the **Points No.1 to 3 in the Affirmative** and held that plaintiffs have been able to make out trio factors in their favour.

12. POINT No.4: Therefore, I proceed to pass the following:

ORDER

I.A.No.I filed by the Learned advocate for the plaintiff No.1 Under Order XXXIX Rule 1 and 2 of C.P.C., is



hereby allowed.

The defendant No.2, her agents, servants or anybody acting on her behalf are restrained by way of temporary injunction from alienating the suit schedule property till disposal of the suit.

No order as to cost.

(Dictated to the stenographer directly on computer, computerized by him, corrected and then pronounced by me in the open court on this the 14th day of February 2024).

(VINUTHA. D.S.)
Prl. Civil Judge and JMFC.,
GUBBI



(Order pronounced in the open
Court vide separate order)

ORDER

**I.A.No.1 filed by the
Learned advocate for the
plaintiff No.1 Under Order
XXXIX Rule 1 and 2 of C.P.C.,
is hereby allowed.**

**The defendant No.2, her
agents, servants or anybody
acting on her behalf are
restrained by way of
temporary injunction from
alienating the suit schedule
property till disposal of the
suit.**

No order as to cost.

**For compliance U/Sec.89
of CPC.**

Call on

**Prl. Civil Judge and JMFC.,
GUBBI.**