

**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC, AT
PAVAGADA.**

Dated this the 6th day of September 2019.

Present :
**Sri. Bharath Yogeesh Karagudari. BAL, LLM.,
Addl. Civil Judge & JMFC,
PAVAGADA.**

ORIGINAL SUIT No. 22/2019.

Plaintiff/s : Sarojamma.

/VS/

Defendants/s : Nagendra.

I.A. No. 1

Applicant : Sarojamma.

/Vs/

Opponent : Nagendra.

ORDER ON I.A. 1 UNDER ORDER XXXIX RULE 1 AND 2 OF CPC,

The plaintiff has filed the application under above said provision praying to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property.

2. The plaintiff has filed the suit seeking for the relief Permanent Injunction against the defendant with respect to the suit schedule property. The plaintiff also pray for interim relief of the temporary injunction. Henceforth, he has filed the present application. The plaintiff agitates that, she is the owner in possession of the suit schedule property. The plaintiff further submits that, the suit schedule property fallen to her name by virtue of gift deed dated: 21-02-2007 executed by her mother. Since, then she is in the possession and enjoyment of the suit schedule property. The defendant who is her brother having no manner of right what so ever in spite of that the he is trying to interfere in the peaceful possession over the suit schedule property of the plaintiff. Hence, with no other option the plaintiff has filed this suit and application. Thus, they pray that, if the defendants are not restrained by way of injunction, it will cause irreparable loss and damage to them. Therefore, the present I.A.is filed.

3. Per contra, the learned counsel for the defendant has filed his objections to the application contending that, the plaintiff has no prima facie case and balance of convenience in her favour. He further contends that, the

alleged gift deed is created and concocted one and she has suppressed several material facts. Further, the defendant claims title and possession over the suit schedule property. He specifically contends that, the suit schedule property is the joint family property of plaintiff and defendant's family. The joint family properties were partitioned and in the said partition suit schedule property has fallen to the share of defendant. Therefore, the plaintiff has got no exclusive possession and rights over the suit schedule property. Thus, the plaintiff does not have any prima facie neither balance of convince nor irreparable loss in his favour. Hence, this application is liable to be dismissed.

4. Heard argument on both sides perused the records.

5. The following points arise for my consideration.

1. Whether plaintiffs prove prima facie?
2. Whether plaintiffs prove balance of convince?
3. Whether plaintiffs prove irreparable loss?
4. What order?

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

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

7. Point No.1 to 3 : Since these points are interlinked hence they are taken together to avoid repetition of facts.

The plaintiff has filed this application seeking interim relief to restrain the defendants from interfering into her possession over the suit schedule property. In the affidavit she claims that, the suit schedule property property belonged to her mother and she has gifted the same of by virtue of gift deed dated: 21-02-2007. Accordingly, she in the possession and enjoyment of the suit schedule property. In order to substantiate her averments she has produced Katha extract and gift deed. On perusal of the documents produced by the plaintiff it appears the katha extract are standing in her name. The plaintiff is claiming in her possession over the suit schedule property by virtue of gift deed dated: 21-02-2007. On perusal of the alleged gift deed it is pertinent to note that, it is an unregistered gift deed. As per Sec. 17 of Indian Registration Act transfer of any immovable property valuing more than 100 rupees requires registration of the documents for enforcing the deed. Since, the gift deed is unregistered one it has no sanctity in the eye of law.

8. On the other hand the defendant contends the suit schedule property is the joint family property and it is partitioned amongst the family members. In order to substantiate it he has produced the certified copy of registered partition deed wherein the share are allotted to the respective members. Thus, on analyzing the documents of both sides it raises clouds

over the titles and possession of the plaintiff as well as the defendant. The plaintiff has failed to put forth any documents which enumerates that, the property belonged to her mother and the possession of the same is conveyed validly to her. Since, the plaintiff has produced unregistered gift deed which is invalid in the eye of law cannot be taken for consideration at this stage. Therefore, it is safe to conclude that the plaintiff has failed to made out prima facie case in her favour. Without the detailed trail it is improbable to consider the version of the plaintiff and defendants in the absence of relevant documents. Under the above circumstance it can be arrived to the conclusion that the plaintiff has failed to make out premia facia case.

9. As per the Sec. 17 of Indian Registration Act gift deed requires registration. In the case on hand the alleged gift deed is not registered. Therefore, it is a violation of law. Under these circumstance it will inappropriate to grant equitable relief to a person who himself has failed to fallow the law. Moreover, there are no document available on record which transpire that the plaintiff is in the possession of the suit schedule property. Hence, the above the circumstance the plaintiff has failed to establish prima facia case in his favour. Similarly, she has not produced any document to prove that she is the possession of the suit schedule property. Therefore, under these circumstance if the relief as prayed in the I.A. by the plaintiff is granted more than the plaintiff the defendant will be put to irreparable loss. Hence, there is no impediment to state that the plaintiff has failed to prove the balance of connivance and irreparable loss in her favour. Thus, the plaintiff has failed in proving all the three ingredients required for granting of temporary injunction.

10. The plaintiff has failed to establish all the three ingredients i.e. prima facie case, balance of convenience and irreparable loss is in his favour. Therefore, I answer **point 1 to 3 in Negative.**

11. Point No. 4: In view of my findings given to point No.1 to 3 in the Negative, I proceed to pass the following.

O R D E R

I.A. No. 1 filed by the plaintiff under order XXXIX Rule 1 and 2 C.P.C is hereby rejected.

No order as to costs.

(Directly dictated to the stenographer on computer and print out taken by him, and then corrected and pronounced by me in the open Court on this the 6th day of September 2019).

(Bharath Yogeesh Karagudari)
Addl. Civil Judge & JMFC,
Pavagada.