

- Defendants :**
1. Shri Prabhakar Dattatray Raikar,
Age: 85 years, Occ: Goldsmith,
R/o. 452, Green Street, Karwar.
(Deleted as per Order dt:22.10.2021)
 2. Shri Satish Prabhakar Raikar,
Age: 62 years, Occ: Goldsmith,
R/o. 452, Green Street, Karwar.
 3. Shri Kishor Prabhakar Raikar,
Age: 52 years,
Occ: Medical Practitioner,
R/o. 452, Green Street, Karwar.
 4. Smt. Usha Vasant Shet,
D/o Prabhakar Raikar,
Age: 64 years, Occ: Household,
R/o. Parvathi Nagar, 2nd Main Road,
Bellary.

[By Shri. RUT. Adv.]

I.A.No.III

- Applicants:**
Plaintiffs
1. Smt. Rajeshree W/o. Arun Raikar
and others.
- Vs.
- Opponents:**
Defendants
1. Shri Prabhakar Dattatray Raikar,
Shri Satish Prabhakar Raikar
and others.

ORDERS ON I.A. NO.III

This is an application filed by the plaintiffs under the provisions Order 39 Rule 1 and 2 R/W Sec.151 of C.P.C. seeking temporary injunction restraining the defendants

from alienating the suit schedule properties till disposal of the suit.

2. **The case of the plaintiffs is as under:**

One Sri. Dattatray Raikar was the propositus of the family of the plaintiffs and defendants. He died leaving behind him his son Defendant No.1 Sri. Prabhakar Dattatray Raikar. The defendant No.1 has got a daughter and three sons viz., defendant No.4 Usha, defendant No.2 Satish, one Arun and defendant No.3 Kishore. Arun died on 19.04.2019 leaving behind him his wife plaintiff No.1 Smt. Rajeshree, a son plaintiff No.2 Ankit and a daughter plaintiff No.3 Asmita. Smt. Surekha who is the wife of first defendant also died.

3. It is averred in the plaint that Sri. Dattatray Raikar was a goldsmith. The first defendant was working with him during his lifetime as a goldsmith. There was a nucleus in the joint family from the business of Gold Jewellery. The plaintiffs and defendants constitute an undivided Hindu Joint Family.

4. It is further averred in the plaint that the first defendant has purchased suit schedule 'A' and 'B' properties from the nucleus of the joint family. Therefore, the name of first defendant was mutated in the suit land vide M.E.No. A.3256 of Baad-I village. The first defendant has gifted CTS No.438 measuring 22.31sq. mts., CTS No.439 measuring 113.25 sq. mts., CTS No.440 measuring 564.44 out of 884.50 sq. mts., along with structure bearing CMC Swattu No.10-1-503-70 to defendant No.3 Kishore Prabhakar Raikar and also gifted CTS No.440 measuring 320.06sq. mts., CTS No.441 measuring 47.25sq. mts., and CTS No.442 measuring 55.69sq. mts., to defendant No.2 Satish Prabhakar Raikar under the registered gifted deeds.

5. It is further averred in the plaint that the first defendant has purchased land in Survey No.7, Hissa 4 measuring 4 gunthas situated in Shirwad village from the nucleus of the joint family. The first defendant has gifted the said property to defendant No.4 Smt. Usha Vasant Shet under the registered gift deed dated 07.03.2019 and therefore, the name of defendant No.4 was came to be mutated in the revenue records vide M.R.No.H.114.

6. It is further averred in the plaint that the first defendant has also purchased flat bearing Karwar CMC No.565/Fth/F1 of fourth floor having carpet area of 111.50 sq. mts., along with undivided right and interest of 19.08 sq. mts., in N.A land bearing CTS No.540 and 541 measuring 144 sq. mts., in revenue Sy.No.27A/2 of Baad-I village from the nucleus of the joint family under the registered sale deed dated 11.11.2019 in the name of plaintiffs No.1 and 2. The suit schedule properties have been purchased from the nucleus of joint family. Though, the said properties are standing in the name of plaintiffs and defendants separately, but, they are in joint possession and enjoyment of the plaintiff and defendants and there was no partition in the joint family. On 15.02.2021, the plaintiffs have requested the defendants to effect the partition of the suit schedule properties. But, the defendants have told them to get their share through the court of law. This is stated to be the cause of action for the plaintiffs to file this suit seeking Partition and Separate Possession of $\frac{1}{5}$ th share in the suit schedule properties.

7. The plaintiffs have filed I.A.No.III seeking temporary injunction restraining the defendants from alienating the suit schedule properties till the disposal of the suit. Apart from reiterating the plaint averments, the first plaintiff has stated in the affidavit that her father-in-law died on 04.09.2021 after filing the suit. The first defendant had no exclusive right to gift the suit schedule properties in favour of the defendants and therefore, the said gift deeds are null and void in the eye of law. The defendants are in possession of the suit schedule properties. They have rented the properties and getting income of Rs 2 to 3 lakhs from the properties. Now, the defendants are trying to sell the suit schedule properties with an intention to create third party rights over the properties and to deprive the rights of the property. The plaintiffs have got prima-facie case, balance of convenience also lies in their favour and hence, irreparable loss and injury would be caused to them, if an order to temporary injunction is refused. Hence, this application.

8. On service of suit summons and notice on I.A.No.III, the defendants have appeared before the court

through their learned counsel and the defendant No.2 has filed the written statement and objections to I.A.No.III denying the material averments made in the plaint. The plaintiffs have been called upon to prove the material averments made in the plaint. The suit is stated to be filed on false averments. The right, title and interest of the plaintiffs over the suit schedule properties has been specifically denied.

9. According to defendants that the suit of the plaintiffs is contrary to law and true facts of the case. Sri. Dattatray Raikar was a teacher. Sri. Dattatray was passed away when Sri. Prabhakar Raikar was aged about 8 years old. Sri. Dattatray Raikar had 3 sons and a daughter viz., 1) Mahadev 2) Shridhar 3) Prabhakar and 4) Indira. Had the suit schedule properties have been acquired from the nucleus of joint family, then all the representatives of late Sri. Dattatray Raikar ought to arrayed as defendants. The plaintiffs and defendants No.2 to 4 are living separately. Neither the plaintiffs nor the defendants are doing gold business. The brothers and sister of Sri. Prabhakar Raikar are not shown in the family tree.

10. According to defendants that Sri. Prabhakar Raikar had purchased the lands from his own funds. They are the self acquired properties of first defendant. The name of first defendant was mutated in the revenue record vide M.E.No.A3256 of Baad-I village and he has gifted CTS No.438 measuring 22.31sq. mts., CTS No. 439 measuring 113.25sq. mts., CTS.400 measuring 564.44 out of 884.50sq. mts. with structure bearing CMC Swattu No.10-1-503-70 to defendant No.3 and CTS No.440 measuring 320.06, CTS No.441 measuring 47.25sq. mts. and CTS No.442 measuring 55.69 sq. mts., to defendant No.2 under the registered gift deeds. These properties are the self acquired properties of first defendant and therefore, gift deeds executed by him in favour of the defendants No.2 and 3 are legal and valid. The first defendant has purchased the land from his own funds and hence, it was his self acquired property and he has gifted the land to defendant No.4 on 07.03.2019 and as per the gift deed, the name of defendant No.4 was entered in the revenue records vide M.E.No.H.114. The first defendant has purchased flat from his own funds in the names of plaintiffs No.1 and 2. The suit schedule properties are not

purchased from the nucleus of the joint family and purchased by first defendant from his own funds and therefore, they are not the joint family properties. The plaintiffs have not included the land bearing Survey No.1366A, Hissa 10 measuring 10.5 annas out of 3 gunthas 12 annas bearing CTS No.12384 along with house bearing CMC No.1228, Baad-III village in Sy.No.1426A and Sy.No.1426B. The plaintiffs have no prima-facie case and balance of convenience also not lies in their favour and therefore, if the injunction is granted, then the defendants would be put to irreparable loss and injury and not the plaintiffs. The defendant No.2 and 3 are not intended to alienate the properties. It is on these grounds, the defendant No.2 has prayed for dismissal of the suit and also I.A.No.III.

11. During the pendency of the suit, the defendant No.1 reported to be dead and therefore, his name has been ordered to be deleted vide Order dated 22.10.2021 as his legal heirs are already on record as plaintiffs and other defendants.

12. I have heard the arguments on both the sides and perused the pleadings of both the parties, I.A., affidavit, objections and documents placed on record.

13. Now, the points that would arise for my consideration are as under:

1. Whether the plaintiffs have made out prima-facie case for grant of temporary injunction against the defendants?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the irreparable loss and injury would be caused to the plaintiffs, if an order of temporary injunction is refused?
4. What Order?

14. On considering the pleadings of both the parties, I.A., affidavit and documents placed on record, now my answers 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 final order, for the following:

REASONS

15. **Points No.1 to 3**:- For the sake of convenience, clarity and also to avoid repetition of facts being narrated separately, these three points are taken up together for common discussion.

16. The learned counsel for the plaintiffs has argued with force that the main propositus was a goldsmith and the first defendant was working with him as a goldsmith and there was a nucleus from the joint family. Therefore, the first defendant has purchased suit schedule properties and therefore, his name was came to be mutated in the revenue records. There was no partition in the family of plaintiffs and defendants and they are in joint possession and enjoyment of the suit schedule properties.

17. It is further contended that the first defendant has gifted the suit schedule properties in favour of defendants No.2 to 4 without the knowledge and consent of

plaintiffs. Now, the defendants are trying to alienate the suit schedule properties to deprive the legitimate rights of the plaintiffs over the suit schedule properties. The suit schedule properties are standing in the name of defendants and therefore, if the defendants are succeeded in their attempts, then the plaintiffs will be put to irreparable loss and injury which cannot be compensated in terms of money. The plaintiffs have got prima-facie case, balance of convenience also lies in their favour and therefore, in order to preserve the property, it is necessary to grant temporary injunction restraining the defendants from alienating the suit schedule properties till disposal of the suit.

18. Per contra, the learned counsel for the defendants has vehemently contended that there was no nucleus from the joint family and therefore, question of purchase of suit schedule properties by the first defendant from the nucleus of the joint family does not arise. The first defendant has purchased the suit schedule properties from his own funds and therefore, he has got every right to gift the properties in favour of other defendants and therefore, he has executed the gift deeds in favour of defendants No.2

to 4 in respect of suit schedule properties and hence, the defendants No.2 to 4 are the owners in possession of the suit schedule properties.

19. It is further contended that the defendants No.2 to 4 are not intended to sell the suit schedule properties. The plaintiffs have no prima-facie case and balance of convenience also does not lie in their favour and therefore, the plaintiffs are not entitled for any temporary injunction as sought for in the application and hence, the application is liable to be dismissed.

20. In the light of the arguments canvased on both the sides, I have carefully gone through the pleadings of both the parties and documents placed on record including the provisions of Order 39 Rule 1 & 2 of C.P.C which deals about cases in which temporary injunction may be granted. As per this provisions of law, where in any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or, (b) that the defendant threatens, or intends, to

remove or dispose of his property with a view to his creditors. (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or dispossession of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further order.

21. It is well settled position of law that the grant of injunction being a discretionary in nature, the party should come to court with clean hands and place all the materials before the court so that the court will be satisfied about the prima facie case in favour of the party seeking the order.

22. In considering the balance of convenience, the Court has to consider the comparative mischief or inconvenience of both the parties or otherwise it is

necessary or proper to maintain the *status quo* until the disputes are finally decided.

23. In considering the question of irreparable injury, the court has to see that the plaintiffs will sustain such injury which cannot be possibly and adequately be remedied by way of damage and the damage would be inadequate in case of success of plaintiffs.

24. It is no part of court's function at this stage of the litigation to try to resolve the difficult questions of facts and law which requires elaborate evaluation of the evidence to be recorded at the trial.

25. Now, keeping the above said provisions of law, principles of injunction and also arguments canvased on both the sides in mind, let us consider as to whether the plaintiffs could able to made out prima-facie case for grant of temporary injunction, balance of convenience also lies in their favour and irreparable loss and injury would be caused to them, if an order of temporary injunction is refused.

26. It is not in dispute that the first defendant is the son of Sri. Dattatray Raikar. It is also not in dispute that the first defendant has got a daughter and three sons viz., Usha Vasant Shet, Satish Prabhakar Raikar, one Arun and Kishore Prabhakar Raikar. It is also not in dispute that Arun Prabhakar Raikar died leaving behind him, his wife, son and daughter who are the plaintiffs No.1 to 3 in this suit.

27. It is also not in dispute that Smt.Surekha, who is the wife of first defendant also died. It is also not in dispute that the plaintiffs are the legal representatives of Arun, who is the son of first defendant. It is also not in dispute that after filing the suit, the first defendant died on 04.09.2021.

28. What is denied is that the right, title, interest and share of the plaintiffs over the suit schedule properties. According to plaintiffs that the main propositus was a goldsmith and he and his son first defendant were doing goldsmith work and therefore, there was a nucleus from the joint family and therefore, the first defendant has purchased all the suit schedule properties from the nucleus of joint family and therefore, it is joint family properties of the

plaintiffs and defendants and they are in joint possession of the same and there was no partition in the family and therefore, they are entitled for $\frac{1}{5}$ th share in the suit schedule properties.

29. The first defendant has gifted the suit schedule properties to the defendants No.2 to 4 without their consent and knowledge and therefore, it is null and void, as the first defendant had no exclusive right over the suit schedule properties to execute the gift deed in favour of defendants No.2 to 4.

30. But, according to defendants that there was no nucleus from the joint family and therefore, question of purchasing the suit schedule properties by the first defendant from the nucleus from the joint family does not arise and it is who the first defendant has purchased the suit schedule properties from his own funds and therefore, the suit schedule properties are the self acquired properties of first defendant and hence, he has executed the gift deed in favour of defendants No.2 to 4 and therefore, the

plaintiffs do not have any right, share or interest over the suit schedule properties.

31. However, the defendants have not seriously disputed their relationship with plaintiffs. Even according to defendants that the plaintiffs are the legal heirs of Arun who is one of the son of first defendant.

32. The plaintiffs have produced the Extracts of the Property Register Cards in respect of CTS Nos.438, 439, 440, 441, 442, RTC extract of suit land bearing Survey No.31A1/4, Certified copy of M.E.No.A3256 of Baad-I village, RTC Extract of land bearing Survey Nos.7/4, Copy of Mutation Registration No.H114 of 2018-19, Certified copy of Sale deed dated 11.11.2019 in respect of Flat bearing Survey No.565/Fth/F.1.

33. On careful perusal of these documents, it is crystal clear that it is who the first defendant has purchased the suit schedule properties and thereafter he has executed the gift deeds in favour of defendants No.2 to 4 in respect of suit schedule properties.

34. Admittedly, the first defendant died on 4.9.2021 leaving behind him the plaintiffs and defendants as his legal heirs after filing the suit. It is not in dispute that it is who the first defendant has purchased the suit schedule properties and now he is no more.

35. The provisions of Section 8 of Hindu Succession Act, 1956 deals about general rules of succession in the case of males. As per this provisions of law, the property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule; (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased.

36. In the present case, it is not in dispute that the plaintiffs and defendants are the legal heirs of deceased first defendant. It is also not in dispute that the plaintiffs are the wife and children of deceased Arun who is admittedly

one of the son of deceased first defendant. Under these circumstances, in the absence of any testamentary documents, the estate of deceased first defendant shall devolve upon his legal heirs who are admittedly the plaintiffs and defendants No.2 to 4 in this case. Under these circumstances, whether the first defendant has purchased the suit schedule properties from the nucleus of the joint family and therefore, the suit schedule properties are the joint family properties of plaintiffs and defendants and they are in joint possession and enjoyment or not is a matter which requires evaluation of evidence to be recorded at the trial.

37. Further, whether the first defendant has purchased the suit schedule properties from his own funds and hence, the suit schedule properties are the self acquired properties of first defendant or not is also a matter which requires evaluation of evidence to be recorded at the trial. Further, whether the first defendant has exclusive right, title, interest over the suit schedule properties so as to execute the gift deed in favour of defendants No.2 to 4 or

not is also a matter which requires evaluation of evidence to be recorded at the trial.

38. Further, whether the plaintiffs are entitled to the relief of partition of $\frac{1}{5}$ th share or not is also matter which requires evaluation of evidence to be recorded at the trial. Admittedly, the plaintiffs are the wife and children of Arun who is admittedly one of the son of first defendant. Under these circumstances, in the absence of testamentary documents, the plaintiffs have got legitimate rights over the suit schedule properties. Therefore, when there is material worth investigating into the matter, then there is a prima-facie case for trial. It is in this sense, I hold that the plaintiffs have made out prima-facie case for grant of temporary injunction.

39. It is pertinent to note here that the first defendant died during the pendency of the suit leaving behind him, the plaintiffs and defendants No.2 to 4 as his legal heirs. It is not in dispute that Arun died on 19.04.2019 leaving behind his wife and children who are the plaintiffs in this case. The plaintiffs being the legal heirs of deceased

Arun who is one of the son of deceased first defendant have got legitimate rights over the suit schedule properties in the absence of testamentary documents as per Section 8 of Hindu Succession Act. Therefore, the balance of convenience also lies in favour of plaintiffs.

40. Now, the suit schedule properties are standing in the name of defendants No.2 to 4 based on the alleged gift deeds executed by first defendant. Therefore, the apprehension of the plaintiffs that the defendants are intending to sell the suit schedule properties is quiet probable and there are no reasons to doubt the apprehension of the plaintiffs at this stage of litigation. Under these circumstances, if the defendants No.2 to 4 are succeeded in their attempts, then it is who the plaintiffs would be put to irreparable loss and injury and not the defendants. Even according to defendants that they are not intending to sell the suit schedule properties. Therefore, no prejudice would be caused to the defendants, if the injunction is granted in favour of the plaintiffs as sought for in the application. The property has to be preserved to

adjudicate the real controversy between the parties and their rights over the suit schedule properties.

41. Therefore, for the reasons discussed above, this court is of the considered view that the plaintiffs have made out prima-facie case for grant of temporary injunction and balance of convenience also lies in their favour and irreparable loss and injury would be caused to them, if an order of temporary injunction is refused. Hence, ***I answer points No.1 to 3 in the affirmative.***

42. **Point No.4**:- In view of my findings on points No.1 to 3, I proceed to pass the following:

:ORDER :

I.A. No.III filed by the plaintiffs under the provisions of Order 39 Rule 1 and 2 R/W. Sec.151 of C.P.C. is hereby allowed.

The defendants are restrained by way of temporary injunction from alienating the suit schedule properties to

any third parties in any manner till disposal of the suit.

The cost of this application shall follow the result of the suit.

(Dictated to the Stenographer, transcribed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the **21st day of April, 2022**)

(N.M. Ramesha)

Prl. Senior Civil Judge,
Karwar.