

**IN THE COURT OF THE CIVIL JUDGE AT ANKOLA**

**Dated this the 29<sup>th</sup> day of August 2018**

**PRESENT**

**Sri Shambhulingayya Mudimath,**  
B.Com.,LL.B. (Spl.),  
Civil Judge and J.M.F.C.,  
Ankola.

**ORIGINAL SUIT NO.78/2017**

**PLAINTIFFS :** 1. Smt.Prema Kom Anant Shetty,  
**APPLICANTS** Age about 73 years,

Occ: Household, R/o Arya,  
Babruwada, Tq: Ankola.

2. Smt.Anasuya Kom Sadashiv  
Harwadekar, Age: about 48 years  
Occ: Household,  
R/o Bhat Clinc Compound,  
Nutan Nagar, Yellapur,  
Tq: Yellapur.

3. Sri Abhishek S/o Sadashiv Shetty  
Age: about 21 years,  
Occ: Student, R/o Bhat Clinc  
Compound, Nutan Nagar,  
Yellapur, Tq: Yellapur.

4. Kumar Deepak  
S/o Sadashiv Shetty,  
Age: about 13 years,  
Occ: Student,  
R/o Bhat Clinc Compound,  
Nutan Nagar, Yellapur,  
Tq: Yellapur, represented by  
Next friend mother  
Plaintiff No.2.

5. Smt.Vidya D/o Anant Shetty  
W/o Gajanan Shetty,  
Age: about 51 years,  
Occ: Household,  
R/o Ananya Building,  
K.S.Bhat Compound,  
3<sup>rd</sup> cross, Gandhinagar,  
Kumta, Tq: Kumta.
6. Smt.Bharati D/o Anant Shetty  
W/o Nagesh Shetty,  
Age: about 50 years,  
Occ: Household,  
R/o Laxmeshwar,  
Tq: Ankola.
7. Smt.Sharada D/o Anant Shetty  
W/o Girish Shetty,  
Age: about 47 years,  
Occ: Household,  
R/o Sharada S.Dundar,  
Rajeev Nagdar, Vidyanagar,  
House No.152, Hubli.
8. Smt.Suvarna  
W/o Shashikant Shetty,  
D/o Anant Shetty,  
Age: about 42 years,  
Occ: Private Job,  
R/o Arya, Babruwada,  
Tq: Ankola.
9. Sri Dattatraya S/o Harihar Shetty  
Age: about 48 years,  
Occ: Coolie,  
C/o Ramdas D.Shetty,  
R/o Arya Nilaya, House No.147,  
Renuka Nagar, Bhrivevara Koppa  
Hubli-25.

(By Sri M.L.Naik and  
Sri A.N.Talgeri, Advocates)

**-Vs-**

**DEFENDANT:** Sri Mahesh S/o Gunavamt Gaonkar,  
**OPPONENT** Age: about 49 years,  
Occ: Agriculturist,  
R/o Alageri,  
Ankola Taluk,

(By Sri N.R.Nayak, Advocate)

**ORDER ON I.A.NO.I**

1. This is an interlocutory application filed by the plaintiffs under Order 39 Rule 1 and 2 read with Section 151 of CPC seeking temporary injunction against the defendant restraining him from alienating, mortgaging, creating charge or pledge in suit serial No.2 property till the disposal of the suit.

2. Along with the I.A.No.I plaintiff No.8 has filed the affidavit wherein she contended that, they have filed the suit claiming partition in the suit properties. It is further contended that, the father of the defendant even though having no authority to sell the property on the basis of GPA executed by Late, Nagamma has executed sale deed in favour of defendant. They challenged the GPA and Will Deed in the suit. The defendant with an intention to dupe

the plaintiffs and he will dispose the property as he likes. The number of customers visiting the spot and contacting the defendant for purchase of the land. If defendant is succeeded in selling the said property during the pendency of the suit, the purpose of the suit will be defeated, the plaintiffs will be put heavy loss and hardship, hence on these grounds they prayed for allowing the application and grant of temporary injunction against the defendant as prayed in the application.

3. The defendant has appeared through his advocate and filed detail written statement cum objection to the IA.I the sum and substance of the objection of the defendant is that, the plaintiffs are no way concern to the suit properties. The facts mentioned in the plaint are totally false, they must be strictly proved by the plaintiffs. It is further contended that, the suit properties were belongs to one Govind Ananth Shetty, he had two wives by name Nagamma and Kalyani. After the demise of the Govind Anath Shetti the Nagamma who is the first wife had applied for grant of occupancy rights as such Land Tribunal has granted the occupancy rights in favour of Nagamma. Then she had executed the Will Deed as

well GPA in favour of father of defendant with love and affection. Thereafter the father of the defendant has executed the sale deed on the basis of GPA in favour of the defendant. Hence defendant is the absolute owner of the suit property serial No.2. The plaintiffs alleged that they are the legal heirs of Govind Ramayya Shetti, if that is so the Govind Ramayya Shetti was not concern to the suit properties, when Govind Ramayya Shetti is not concern to the suit properties, the late Ananth Govind Shetti alleging that son of Govind Ramayya Shetti as mentioned in the plaint is not also concern to the suit properties, on these grounds he requested the court to dismiss the application.

4. Heard and Perused the materials available on record.

5. Now the points that arise for my consideration are as under:

1. Whether plaintiffs have made out prima facie case?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs will be put to irreparable loss and injury if the T.I. is not granted as prayed in I.A.No.1?
4. What order?

6. My findings on the above points for consideration are as under:

Point No.1 to 3: In the affirmative.

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

**REASONS**

7. **POINT NO.1 TO 3**:- Since these points are interlinked together, hence I taken these points together for discussion to avoid the repetition.

8. This is a suit for the relief of declaration to declare plaintiffs are the legal heirs of late Govind Ramayya Shetty and for cancellation of the sale deed dated 18-5-2002 and for cancellation of the will dated 13-08-1986 registered on 18-08-1986 and also for recovery of possession of suit serial No. 2 property. The main case of the plaintiffs is that, they are the legal heirs of late Govind Ramayya Shetty. The suit properties were acquired by the Govind Ramayya Shetty as a Mulgenidar, after his death the suit properties were inherited by his two wives by name Kalyani and Nagamma. The second wife Nagamma had filed form No.7 before Land Tribunal to grant the occupancy rights on behalf of whole family, as such the Land Tribunal has granted the occupancy rights in favour of Nagamma. But the father of the defendant with an intention to grab the property from the

Nagamma created the false will said to have been executed by Nagamma and also executed the sale deed infavour of defendant on the basis of GPA said to have been executed by the Nagamma though it was not executed for the sale purpose. There were some proceedings were taken place in the revenue court, the defendant falsely asserts that he is the owner, hence plaintiffs filed the suit as sought for and also filed the application for grant of temporary injunction. On the other hand defendant totally denied the case of the plaintiffs. And specifically contended that, the plaintiffs are no way concern to the suit properties, if plaintiffs are the heirs of Govind Ramayya Shetty, then they are not concern to the suit properties as the suit properties are belongs to one Govind Anath Shetty. The said Govind Anath Shetty had two wives Nagamma and Kalyani both the wives were died issueless, the Nagamma who is the first wife of Govind Anath Shetty has executed the will deed and GPA in favour of father of the defendant hence plaintiffs are not concern to the suit properties, the plaintiffs took disadvantage of similar name appeared in the record of rights, on this grounds he requested for rejecting the application.

9. I have perused the application, affidavit and objection filed by both the parties. At the time of hearing the interim application the plaintiffs have relied some documents they are RTC, Mutation Entries, plaint and written statement in O.S.No.80/1986, judgment in OS.No.80/1986, Land Tribunal Order, sale deed, RTS Appeal, GPA, Will Deed, death extract of Nagamma, death extract of Sadashiv shetty, death extract of Anant Govind Shetty, death extract of Gajanan Shetty. On perusal of the documents produced by the plaintiffs, more particularly Land Tribunal order dated 02/01/1976 and form No.10 Patta issued by Tahasildar Ankola and MR No.3376 of Alageri Village are prima facie appears that the Land Tribunal Ankola has granted occupancy rights in favour of kalyani and Nagamma jointly in respect to property bearing Sy.No.587/3 extent 00-17-00 of Alageri Village. But plaintiffs challenging the will deed and GPA said to have been executed by the late Nagamma and sale deed executed by the father of defendant in favour of defendant on the basis of GPA in respect to suit serial No.2 property. But defendant contended that, the plaintiffs are no way concern to the property, one Govind Anath Shetty was the owner of the suit property, but showing this fact, the defendant did

not produced any document at this juncture. The court at this juncture cannot express any opinion about the genuineness of the above said documents. Execution of the document i.e., Will Deed, GPA and Sale Deed must be considered after full trial. Hence the plaintiff's averments and affidavits and documents of plaintiffs are prima facie. It appears that plaintiffs have a prima facie case against the defendant.

10. The contention of the defendant will be decided after full trial of the suit. Admittedly suit 'B' property is in the name of the defendant. It is the case of the defendant that, his father executed the sale deed in his favour on the basis of GPA. But plaintiffs allege that, there is no clause in the said GPA about selling the property and it was executed only to conduct the suit No. 80/1986 in favour of the defendant's father. When plaintiffs challenged the GPA and its Sale Deed, if the defendant is restrained from alienating the suit property, no prejudice will be caused to the defendant otherwise it will lead to multiplicity of proceedings. To avoid the multiplicity of proceedings, it is just and reasonable to issue the temporary injunction against the defendant. If the application is not allowed, certainly plaintiffs will be put to

heavy loss rather than the defendant. The balance of convenience is also infavour of the plaintiffs.

11. In judgment reported in **1990 Supp Supreme Court cases 727 (Wander Limited and another Vs. Antox India Private Limited)** wherein Hon'ble Apex court held that,

*"Usually the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case, the court also, in restraining a defendant from exercising what he considers his legal right, but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which later case considerations is somewhat different from those that applied to*

*a case where the defendants is yet to commence his enterprise are attracted”.*

12. As I have already discussed in the above para's that, the plaintiffs have made out prima facie case, if temporary injunction is not granted certainly plaintiffs will suffer more hardship rather than the defendant. The balance of convenience is also in favour of the plaintiffs. The observation made in the above para's are tentative with respect to disposal of the interim application, the court cannot express any opinion on merits of the case while disposing the interim application. On this observation and by applying the principles laid down in the above cited judgment and considering the discussion made above I **answered point No.1 to 3 in the affirmative.**

13. **POINT NO.4:-** For the aforesaid reasons, discussion made above considering the material on record, I proceed to pass the following

**ORDER**

I.A.No.I under Order 39 Rule 1 and 2 read with Section 151 of CPC filed by the plaintiffs is hereby allowed.

The defendant is hereby restrained from alienating, mortgaging, creating charge or pledge in suit serial No.2 property till the disposal of the suit.

No order as to costs.

(Dictated to the Stenographer directly on computer, type and scribed by her, the same is corrected and then pronounced by me in the open court on this the 29<sup>th</sup> day of August 2018.)

**(Shambhulingayya Mudimath)**  
Civil Judge, Ankola.