

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

Dated this the 22 nd day of October 2019

**PRESENT**

**Sri Raju Shedbalakar,**

B.Com.,LL.B. (Spl.),  
Addl. Civil Judge and J.M.F.C.,  
Ankola.

**ORIGINAL SUIT NO.93/2017**

**PLAINTIFFS :** 1. Smt.Sukri W/o. Mahabaleshwar Gouda  
**APPLICANTS** D/o. Mabu Shivu Gouda  
Aged about 54 years,  
Agriculturist, R/o Tenebole, Andle,  
Taluk: Ankola, (U.K.Dist.)  
(By Sri A.N.Talgeri, Advocate)

**-Vs-**

**DEFENDANTS:** 1. U.F.M Smt. Sukri W/o. Venkata Gouda,  
**OPPONENTS** Aged about 50 years,  
Occ: Agriculturist,  
R/o Hosur, Taluk: Ankola,  
Uttara Kannada District.

2. U.F.M Smt. Rukmini W/o. Huliappa  
Gouda, Aged about 54 years,  
Occ: Agriculturist, R/o Hosur,  
Taluk: Ankola, Uttara Kannada District.

3. U.F.M Smt. Shivamma W/o. Shivu  
Gouda, Aged about 45 years,  
Occ: Agriculturist, R/o Andle,  
Taluk: Ankola, U.K. District.

4. U.F.M Smt. Sumitra W/o. Timma  
Gouda, Aged about 40 years,  
Occ: Agriculturist, R/o Andle,  
Taluk: Ankola, U.K. District.

(D1 and 3 - By Sri S.R.Narvekar, Advocate  
D - 2 - By Sri P.P.Gouda, Advocate)

**COMMON ORDER ON I.A.No. I and IV**

This is IA No. I filed by the plaintiff under Order 39 Rule 1 and 2 read with Section 151 of CPC seeking temporary injunction restraining the defendant No.1 to alienate the land bearing Sy. No.65/2B1 area 2-00-00 of Andle village by way of sale, lease,gift, mortgaging or creating charge over the said suit property till disposal of the suit.

This is IA No. IV filed by the plaintiff under Order 39 Rule 1 and 2 read with Section 151 of CPC seeking temporary injunction restraining the defendant No.1 to alienate the land bearing Sy. No.65/2B1 area 2-00-00 of Andle village by way of sale, lease,gift, mortgaging or creating charge over the said suit property till disposal of the suit.

3. Along with the I.A.No.1 and 4 the plaintiff has filed the affidavit wherein she contended that, the her father name Mabu Shivu Gouda is the common propositus of the plaintiff and defendants. And died

intestate leaving behind plaintiff and sons by name Venkata, Huliappa, Shivu and Timma. Further submits that plaintiff and defendants constitute Hindu undivided joint family governed by Mitakshara Law and the suit schedule properties are joint family properties and plaintiff and defendants are in joint possession and in actual constructive joint possession suit schedule lands. The lands of the Uluvare village shown in the suit schedule where standing in the name of Huliya Shivu Gouda who died on 01-09-2006 unmarried without issues and after his demise all the suit properties devolve upon his brother and sole legal heir father of the plaintiff and his name mutated as per M.R. No. 3/2007 -2008 of Uluvare village. Further submits that plaintiff is having 1/5 th share in the suit schedule properties. Further submits that as per the M.R. No. H11 of Andle village reveals that the land bearing No. 65 Hissa 2 A area 00-26-00 guntas is gifted plaintiffs father to the defendant No. 1 but in fact plaintiffs father has not gifted and not intention to gift. The defendant No. 3 taking undue advantages of old age and illiteracy father of the plaintiff managed to create such document and get entered her name in the record of rights. Further submits that plaintiff father is not absolute owner of the land bearing No. Sy. No. 65/2A area 00-26-00 guntas of Andle village and he has no right to gift also. Therefore , the said alleged gift is not binding on my right. The M.R. No.2/2005-2006 of Andle village reveals that Mutation is effected in respect of land bearing

No. 65/2B1 are 02-00-00 of Andle village in the name of defendant No. 1 and the said entry behind back without

knowledge of the plaintiff hence not binding the plaintiff and submits that defendant no 1 made all preparation to raise huge loan by mortgaging the suit properties SI No 18 or creating charge over the suit properties. Also trying to alienate Sy. No. 65/2B1 area 2-00-00 of Andle village, by way of sale, lease, gift, mortgage or by creating charge over the said land till disposal of this suit. The plaintiffs is having 1/5th share each in the suit properties. Hence, it is just and necessary to prevent the defendant No.1 to alienate the suit properties till disposal of the suit. Otherwise, it invites multiplicity of proceedings. Hence, prayed for allowing the application and grant of temporary injunction as prayed in the application.

4. On the other hand, defendant No.1 has appeared through his counsel and filed detailed objection to I.A.No.1 cum written statement to the suit contending that, suit of the plaintiffs is contrary to law and true facts, hence deserve to be dismissed. The defendant No.1 further denied all the allegation made in the plaint and specifically contended that the plaintiff not having any right over the Andle and Hosura village also denied the joint family properties and joint owners. Suit properties are not the Shivu Gouda's properties and suit properties are the self acquired properties of the defendant's husband's uncle by name Huliya Shivu Gouda and during his life time he was cultivating the same and his wife

was died and during his life this defendant's husband's were looking the Huliya Gouda as per his love and affection the Huliya Gouda executed "will" in favour of the brothers sons by name Venkata Mablou Gouda in the presence of the Santosh G Naik . Further contended that during the life time of the Huliya @ Huliyyappa his brother son inherited the some of the suit properties after his demise this defendant inherited the same

5) Further contended that, as per the plaint avernment Hulya Shivu Gouda never married infact he was married and his wife was died and submits that suit properties are not joint family properties and as per the law this defendant executed the gift deed infavor of the sister in law and denied the other plaint avernment of the plaint. Hence, prayed for rejecting the application.

6. Heard and Perused the materials available on record.

7. 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.I?
4. What order?

8. My findings on the above points for consideration 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**

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

10. The main case of the plaintiffs is that, plaintiffs and defendant No.1 to 4 are the children of the Mabu Shivu Gouda . The plaintiff and defendant are having equal share in the suit properties. There is no partition by metes and bounds in the suit properties. Meanwhile, the defendant No.1 fraudulently got executed gift deed in his favour by the Mablu Shivu Gouda and trying to alienate the said properties. Hence, plaintiffs requested for partition before the defendant No.1. The defendant No.1 denied the partition. Hence, they constrained to file the suit.

11. On the other hand, defendant No.1 contended that along with the suit properties Huliya Shivu Gouda are also having some other properties

and he was big agriculturist and cultivating the properties. This defendant's husband i.e Venkata Mablou Gouda who assisted him in the cultivation of land and remained with him. Huiya @ Huiyapa Gouda his wife was also dead. While he was still alive his brother son that is husband of this defendant Venkata Mablou Gouda had taken him to his house and nurtured him. This defendant is also staying with him. Thus in his lifetime he executed one will dated 08-02-2012 in favour of Venkata Mablou Gouda, In the presence of witness and one Sri Santosh G Nayak Advocate as per the law. And also denied all the plaint averments sought for dismissal of the suit.

12. I have perused the application, affidavit and objection filed by both parties. At the time of hearing the application, the plaintiffs relied so many documents. They are record of rights pertaining to suit schedule properties, mutation entries, death certificates of Mabu Shivu Gouda. The defendant No.1 did not produce any document.

13. I have perused the said documents. On perusal, the record of rights pertaining to suit property except Sy.No.65/2B1 are prima facie at this juncture discloses that, said properties are standing in the name of the defendant No.1. The mutation entry No.2/2005-2006 of Ankola village also prima facie discloses that the defendant No.1. Admittedly, the present suit is for partition and separate possession. The defendant No.1 did not claim any counter claim or even he did not take any plea

for earlier partition. He totally denied the case of the plaintiffs and sought for dismissal of the suit. The plaintiffs challenging the said gift deed said to have been executed by the Mabu Shivu Gouda in favour of defendant No. 3 as per the M.R. No. H 11/2016-2017. But, defendant No.1 did not taken any contention about earlier partition. Hence, at this juncture, it prima facie discloses that suit properties are ancestral properties and there is no partition by metes and bounds between plaintiffs and defendants. The plaintiffs claiming their share in the suit properties. Whether defendant No.1 got any right on the basis of gift deed is to be decided after full trial of the suit. Hence, I am of the view that, until deciding the share of the parties, preservation of the suit properties till disposal of the suit is just and necessary. If, defendant No.1 is not restrained from alienating the suit properties mentioned in the application, certainly defendant No.1 will alienate the said properties and it will leads to multiplicity of proceedings. Hence, to avoid the multiplicity of proceedings, restraining the defendant No.1 from alienating the suit properties is just and necessary. Hence, the affidavit and plaint pleadings and documents are shows prima facie case in favour of plaintiffs as against the defendant No.1. The balance of convenience is also in favour of plaintiffs. If temporary injunction is not granted, plaintiffs will be put to the heavy loss rather than the defendant No.1. Hence, on these observation and discussion made above, **I answered point No.1 to 3 in the affirmative.**

14. **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 and IV under Order 39 Rule 1 and 2 read with Section 151 of CPC filed by the plaintiffs is hereby allowed.

Defendant No.1 is hereby restrained from alienating, transferring, mortgaging or creating charge over the suit property bearing Sy.No 65/2B1 of Andle village of Ankola taluk till deciding the suit by way of temporary injunction.

No order as to costs.

(Dictated to the Typist – Copyist directly on computer, type and scribed by her, the same is corrected and then pronounced by me in the open court on this the 22 nd day of October 2019.)

**(Raju Shedbalkar )**

**Addl. Civil Judge, Ankola.**

