

KAUK410028132022



**IN THE COURT OF
CIVIL JUDGE AND JMFC COURT, DANDELI
AT DANDELI, UTTARA KANNADA
Presided Over by ROHINI D BASAPUR**

O.S.268/2022

DATED THIS THE 29th DAY OF AUGUST 2023

Plaintiff/Applicant: Smt. Fatima W/o. Mastanvali Shaikh

A/a: 51 years, Occ: Agriculture,

R/o: H.No.94, KPC Colony,

Ramanagar, Tq- Joida,

District- Uttara Kannada

By her GPA holder

Sri. Mastanvali Abdulkhadar Shaikh,

A/a: 66 years, Occ: Agriculture,

R/o. H.No.94, KPC Colony, Ramanagar,

Tq- Joida, District- Uttara Kannada

[Represented by Sri. I.C.N., Advocate]

-V/s-

Defendant/Opponent: 1) Smt. Tahera W/o. V.P. Sainuddin

A/a: 68 years, Occ: Agriculture,

R/o: Ambeli, Ilava, Tq- Joida,

District- Uttara Kannada

2) Smt. Jayeda W/o. Mohammed Ali Shaikh

A/a: 40 years, Occ: Household work,

Near Eshwar Temple, Kulagi Road,

Dandeli, Tq- Dandeli, (U.K)

3) Smt. Ayeshabanu W/o. Gousemohiddin Konnur

A/a: 39 years, Occ: Household work,

R/o: Ambeli, Ilava, Tq- Joida,

District- Uttara Kannada

4) Sri. Mustaq Sainuddin S/o. V.P. Sainuddin

A/a: 32 years, Occ: Agriculture,

R/o: Ambeli, Ilava, Tq- Joida,

District- Uttara Kannada

5) The Government of Karnataka,

Represented by the Deputy

Commissioner,

Uttara Kannada District, Karwar

**6) The Public Welfare Department
(PWD) Sub Division Joida,**

District- Uttara Kannada,

Represented by the Assistant
Executive Engineer (AEE)

7) The Tahasildar

Tq: Joida, Dist: Uttara Kannada

**8) The Assistant Director of Land
Records (ADLR) Department of
Survey, Joida,**

District: Uttara Kannada

[Def No. 1 to 4 by Shri V.Y.L. Advocate]

[Def No. 5 to 8 by Ld. AGP]

ORDERS ON APPLICATION FILED BY THE PLAINTIFF

UNDER ORDER 39 RULE 1 AND 2 C.P.C.

The present application is filed seeking for ad-interim injunction against the defendant No.1 to 4 from alienating the suit property till the disposal of the suit.

2. Brief contentions of plaintiff as mentioned in the application is as under:

The plaintiff and and the defendant No.1 are the elder daughter of one late Shri V P Sainuddin who was expired on 30-03-2022 at the time of her marriage as a token of love and

affection her father had donated a part of agricultural land i.e. the suit property by way of an oral gift (Hiba) .

3. Recently, all of a sudden the defendant No. 1 to 4 in view of registered gift deed and by taking undue advantage of their names are recorded in the revenue records of survey No. 250/1 of Ambeli (Ilva) village in which the suit property are now trying to alienate the same. If the same is not prevented, then undue hardship, irreparable loss and injustice will be caused to the plaintiff and the very purpose of the suit will be frustrated. Plaintiff has got prima facie case and fair chance of success in the suit. The balance of convenience is also in favour of plaintiff. No loss or hardship whatever will be caused to the defendants if an ad interim order as prayed for is granted. Hence, prayed to dismiss the application.

4. Per contra, Ld. Counsel for defendants have filed objections that, there was no cordial relationship between the husband of the plaintiff and her parent. As the husband PA holder of the plaintiff was greedy of money, was torturing the plaintiff often to bring money from her parents. On account of it the plaintiff was attacked by severe paralysis in the past 5-6 years and now she can't speak and is unable to understand the things. The power of attorney is an outcome of fraud and misrepresentation. Thus by taking undue advantage of it, the husband of the plaintiff has filed the instant suit against the defendants as PA holder with an oblique motive to grab the property of the defendants on false, self serving and flimsy

grounds without any cause of action. Hence, prayed to dismiss the application.

5. Having heard learned counsel for the parties and perusing the record, the points that arise for my consideration are as follows:-

POINTS

1. Whether the plaintiff has made out a prima-facie case?
2. Whether the balance of inconvenience is in favor of the plaintiff?
3. Whether the plaintiff would suffer irreparable loss or injury if the prayer for injunction is not be granted?
4. What order?

6. My answer to the above points is as follows:-

POINT No.1 :- In the affirmative

POINT No.2 :- In the affirmative

POINT No.3 :- In the affirmative

POINT No.4 :- As per the final order,
for the following :-

REASONS

7. Point No.1 to 3 : All these three points are taken up together for common discussion for brevity. At the outset, the suit is for declaration of suit property on the basis of will and for injunction. As the plaintiff claiming her title upon will and

the defendants deny the same, the genuineness of the will, and its proof can be determined only after the full pledged trial. At this stage the court cannot hold a mini trial. As such it is very essential to preserve the suit property until the disposal of the suit. If the application is not allowed, it might lead to complications in multiple transactions. As such it is essential to allow the application in the interest of justice and equity. If the temporary injunction is not granted, it would not cause any grater hardship to the defendants. Accordingly, I answer point No.1 to 3 in the affirmative.

8. POINT No. 4:- Therefore for the aforesaid reasons I pass the following:

O R D E R

IA No.II under Order 39 Rule 1 & 2 R/w. Section 151 of CPC filed by the plaintiff is allowed.

In the result, defendant No.1 to 4 are restrained from alienating the suit schedule property till the disposal of the suit.

No order as to cost.

For Issues.

Call on : 27-09-2023.

(Dictated to the stenographer directly on computer, typed by her, corrected by me and then pronounced in the open court on this the 29th day of August-2023)

Civil Judge & JMFC, Dandeli.

