

KAUP020004552020



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND CJM., AT UDUPI.**

Dated : This the 24th day of September 2021

Present: Smt. Shakunthala S.,
B.A. L.L.B.
Prl. Senior Civil Judge & CJM.,
Udupi.

O.S.No.34/2020

Plaintiff : A. Sudhir Kodgi.

V/s

Defendants : A. Rajendra Kodgi and others.

I.A.No.II, III and IV

Applicant : A. Sudhir Kodgi,
Aged about 44 years,
S/o Late A. Chandrashekar Kodgi,
R/at "Guru Kripa",
Hayagreeva Nagar, Indrali,
Post: Kunjibettu,
Udupi Taluk – 576102.

- Plaintiff

V/s

- Opponents** :
1. A. Rajendra Kodgi,
Aged about 49 years,
S/o Late A. Chandrashekar Kodgi,
R/at Apartment Flat No.602,
“Kodgi Sai Sadan”,
Post Kunjibettu, Indrali,
Udupi Taluk – 576102.
 2. Gopalakrishna Bhat,
Director Trisha Vidya College of,
Commerce and Management,
Vasuki Tower,
Mission Hospital Road,
Udupi – 576101.
- Defendants No.1 & 3.

COMMON ORDERS ON I.A.NO.II TO IV UNDER ORDER
XXXIX RULES 1 AND 2 R/W SECTIONS 94(e) AND 151 CPC
FILED BY PLAINTIFF

These common orders arising out of applications filed by plaintiff with a prayer to grant an order of temporary injunction restraining defendant No.1 or anybody claiming through or under him from alienating, encumbering or creating charge over the plaint "A" and "B" schedule properties or any portion there of and also restraining defendant No.1 or anybody claiming through or under him

from constructing any building/permanent structure or alteration of any existing building in the plaint "A" and "B" schedule properties or any portion there of till disposal of the suit and also restraining defendant No.3 or anybody claiming through or under him for payment of monthly rent to defendant No.1 till disposal of the property or ending of his lease period with a direction to deposit the same before this court.

2. In support of the applications, the plaintiff sworn to an affidavits that defendant No.1 and 2 are his brothers. "A" and "B" schedule properties belong to their joint undivided family. The suit filed for the relief of partition in the suit schedule properties. The suit schedule properties which were inherited by their ancestors and some of the items of family properties sold for a valuable consideration by the family members and the sale proceeds derived from family properties invested in the lands and shares by the family for the benefit and welfare of their entire undivided joint family. The funds derived from the family properties on the sale proceeds and other ancestral

nucleus, they purchased the properties described in “A” schedule.

3. Defendant No.1 being the eldest member and yajaman of the joint family is managing the family properties. Either himself nor defendant No.1 and 2 have no independent source of income other than family income and have fully dependent on the income derived from the family properties. Defendant No.1 is maintaining and supervising the entire family properties with regard to construction of apartment with the assistance of him and defendant No.2. Defendant No.1 himself participated in all the sale transactions of the family properties and entire sale proceeds invested to acquire properties described in the “A” schedule properties on behalf of entire family. Even purchased in his name, defendant No.1 and 2 as per their convenience and the entire fund to purchase the properties used out of the income derived from the family properties, therefore, all the schedule properties are joint family properties.

4. For convenience and for management of the family and their properties smoothly, himself and defendant No.2 have executed general power of attorney on good faith. In the beginning of 2017, defendant No.1 has started to misappropriate the family funds in order to get wrongful gain to himself by defrauding him and defendant No.2. After came to know the illegal and unlawful intention of defendant No.1, they constrained to cancel the power of attorney by issuing notice dated 04-03-2017 by registered post to his permanent residential address and also by way of paper publication. Prior to issuing legal notice to cancel the power of attorney executed by him, himself and defendant No.2 have orally informed the defendant No.1 that he should not do any acts on their behalf on the strength of said power of attorney. Therefore, from the date of notice about cancellation of power of attorney, defendant No.1 has no right or authority to represent on their behalf in respect of the suit schedule properties or any properties belongs to their family. Even though the said power of attorney canceled and if he done any acts on the said power of attorney such act or things would not be binding them.

5. Defendant No.1 leased out the premises bearing item No.4 of the plaint "A" schedule premises on the monthly rent of Rs.1,08,333/- to defendant No.3 and collecting monthly rent and mis-appropriated the said money. Without their consent defendant No.1 schemed to construct building in item No.1 and 2 of the plaint "A" schedule properties in order to damage the family properties. If he carried out, which would be materially affect the enjoyment of the joint family. Therefore, it is just and necessary to maintain the status quo till legal right of the plaint "A" and "B" schedule property would be settled. In order to maintain cordial relationship, requested defendants to divide the schedule properties, but defendant No.1 dragging on the same on one or the another pretext. If defendant No.1 alienated the suit schedule properties and if he succeeds in his illegal acts, he will be put to great financial loss, hardship and irreparable injury and their right will be invaded by the illegal acts. Hence, the act of defendant No.1 shall be restrained from alienating and constructing or altering the existing building over the suit schedule properties by an order of temporary injunction till disposal of the suit. Otherwise he will definitely carry out their

threat into action. In such an event, he will be put to great loss and hardship and irreparable injury which cannot be compensated in terms of money. Hence, he made out a prima facie case and balance of convenience is in his favour, accordingly prayed to allow the applications.

6. The said applications have been resisted by defendant No.1 by filing memo adopting the written statement as his objections to the I.A. and contended that his father late A. Chandrashekhar Kodgi was an employee of Syndicate bank drawing a gross salary of ₹.10,000/- at the time of his retirement in the month of November 1994. While retiring from the services he has received a meager amount of ₹.1,58,000/- as his retirement benefits and he has no other source of income and had debts to repay. He also acquired properties at Kundapura Taluk on partitioning separate and individual properties of his father A. Sarvothamaraya Kodgi as one of his heirs as per registered partition deed dated 01-10-1965 after coming into force of Hindu Succession Act. However, late A. Chandrashekar Kodgi sold his self acquired and separate properties in view to repay his borrowings and getting his 2nd

daughter's marriage during 1992 for a consideration of Rs.1,96,000/- and the sale proceeds was utilized by him for repaying his outstanding loan amount. Thereby exhausting the entire sale proceeds. Though he receiving pension from 1998 was insufficient for meeting his medical expenses since he was an heart patient, had undergone coronary artery by-pass surgery during August 1994 and after his retirement in the month of November 1994, all the house hold expenses have been met by him as a responsible son of his parents. He was earning income from land dealing brokerage business, vehicle dealings, medical records drafting jobs, construction, trading and investments made in shares and savings made in bank deposits. After acquisition of item No.5 of "A" and "B" schedule properties which are agricultural properties, he had been receiving agricultural income from sale of medicinal plants such as insulin plants, allovera etc and mexican grass and other agricultural crops grown on the said properties. He was staying in Bangaluru from 2007 after the death of his father and thereafter started residing at Mangalore after his marriage in May 2014 with his wife. However, he was regularly visiting and staying in Gurukripa house looking after his sick mother

who expired during May 2016 and 1st sister Vijalakshmi Shetty has been separately staying with her husband at Manipal ever since her marriage and his 2nd sister Vinaya Rao has been residing at Hyderabad with her husband ever since her marriage. Item No.1 and 2 of the plaint "A" schedule properties though purchased in the joint names of plaintiff, defendant No.2 and himself, but the entire sale consideration amount of ₹.28,75,000/- was solely paid by him from his individual capacity out of his individual income i.e. agricultural income received from agricultural lands and from the accrued income, borrowings and savings which was paid by way of cheques to the vendors as shown in the sale deed. After purchase, he alone has been in possession and enjoyment of said properties as absolute owner, wherein plaintiff and defendant No.2 are very much aware that their names were nominally included in the sale deed with a specific understanding of not conferring any joint right on them and for availing income tax benefits by countering the capital gain tax liable to be paid by them in connection with the apartments sold at Cavalry Court, Kamaraj Road, Bangalore. The entire sale consideration paid by him, plaintiff and defendant No.2 did not have any right

over the properties. Plaintiff and defendant No.2 have executed a registered release deed dated 07-03-2017 and have released their 2/3rd undivided right in his favour in respect of item No.1 and 2 properties, accordingly he is the absolute owner thereof.

7. The plaintiff and defendant No.2 have executed general power of attorney dated 19-03-2012 by appointing him as their true and lawful attorney and empowering to release/relinquish their undivided right and interest in the joint family properties. After execution of release deed, plaintiff and defendant No.2 also given their consent letters and no objection for releasing their undivided right and interest in the joint properties in his favour. On the basis of said G.P.A. dated 19-03-2012, which was in force on the date of execution of release deed dated 07-03-2017 and consent letters also given by them and he being an agent and power of attorney of plaintiff and defendant No.2, got executed the said release deed dated 07-03-2017. On the basis of said release deed, khatha mutated and RTC standing in his name. Accordingly, he has been in exclusive possession and enjoyment of item

No.1 and 2 of “A” schedule properties as absolute owner. The release deed is valid and binding on them and are legally barred from claiming any share in the said properties. Their alleged joint right in item No.1 and 2 of the “A” schedule properties have become long extinguished in view of the release deed and deliberately he has suppressed the execution of release deed having knowledge. Moreover, he also informed, but without challenging and without seeking cancellation of said release deed, suit is not at all maintainable.

8. Item No.3 of the “A” schedule properties bearing flat No.402 in apartment building Inland Ebony has been purchased by him in his individual capacity out of his self earnings with an intention to house his wife and her aged mother who were then residing in a small apartment in Mangalore. After marriage, his wife who is a post graduate Doctor by profession working as an Anaesthesia specialist and Assistant Professor in Mangalore and residing with her aged mother along with him and his son aged 4 years. The consideration amount of ₹.37,75,000/- paid by him which is his self earned money and there never existed any Hindu

undivided family property or family nucleus or funds at the time of purchase of said property and he had no intention to purchase the said property for the benefit of joint family and the recitals made in the sale deed at an undisputed point of time, the income tax returns filed by him which reveal the source of income for purchase in his individual capacity. After purchase khatha mutated in his name, accordingly he is an absolute owner thereof. He got executed settlement deed registered on 28-11-2016 and settled the said item No.3 property in favour of his wife. Eversince the said settlement deed, his wife has been in possession of the said apartment as an absolute owner, katha mutated in her name. He had availed ₹.77,00,000/- loan by mortgaging the apartment and item No.1 and 2 of plaint "A" schedule properties and the said loan is now subsisting. Having knowledge of all these things, plaintiff suppressed the execution of settlement deed executed by him in favour of his wife, as such his claim is false. The apartments at "A" and "B" schedule properties not at all divisible and partible properties and is no longer the owner of the said apartment. The claim for partition without challenging the recitals of sale deed and without seeking

cancellation decree to set aside the settlement deed executed by him in favour of his wife is not maintainable.

9. He purchased 1/3rd undivided right over the terrace portion known as Vasuki tower situated in Badagabettu Village, Udipi with a right to construct 2nd floor out of his personal funds as per the indenture of sale made and executed between Vasudeva Aithal and others and himself for a sale consideration of ₹.2,80,000/-. The said property was purchased by him with an intention to construct 2nd floor to the said building to carryout commercial activities. The sale consideration paid by demand draft on his account towards repayment of loan account of vendor of sale deed and the remaining 2/3rd undivided right in respect of said property though purchased in the name of plaintiff and 2nd defendant, but the entire consideration paid by him, out of his self earnings. The 2/3rd undivided right was purchased in their names to get income tax benefits. After purchase of the terrace portion of Vasuki Tower building was constructed by him alone by spending his self acquired funds. After construction of the said building, he was running a hospital by name

Sathya Sai Multi-Speciality Eye Hospital for few years by obtaining licence. Again with an intention to avail tax benefits to purchase agricultural lands without contravening the provisions of Karnataka Land Reforms Act, he had released his 1/3rd right over the said 2nd floor building in favour of plaintiff on 05-03-2004. The understanding between them was that plaintiff and defendant No.2 would transfer the property to his name whenever he desires. However, even after execution of release deed, he himself was looking after and managing the day to day affairs of said building. After closure of Sathya Sai Multi- Speciality eye hospital, the said building was granted on lease to MT. Educare Pvt. Ltd. and the tenant was crediting the monthly rent to the account of plaintiff and defendant No.2 after execution of release deed by him. However, the tenant continued to credit maintenance to his account till he vacated the said building during 2018. Thereafter, it was leased to M/s. Siddhant Foundation (R) by him after execution of settlement deed by the plaintiff and defendant No.2 in his favour. The said tenant was running a college by name Trisha Vidya College of Commerce and evening college and rent also paying to his account.

10. The defendant No.1 admitted that plaintiff and defendant No.2 have entered into a registered partition in respect of said property on 30-06-2007, but the contention that they were enjoying jointly is not correct. They were never in enjoyment of the said property either jointly or separately at any point of time. The plaintiff and defendant No.2 by executing the settlement deed dated 07-03-2017 settled respective portions allotted to their respective shares as per partition deed dated 30-06-2007 in his favour which was enjoyed by him as an absolute owner.

11. Plaintiff and defendant No.2 executed power of attorney empowering him to transfer/ alienate their properties by way of settlement, gift, mortgaging and to sign the said deeds on their behalf and both of them had given their consent letters. On the basis of general power of attorney which is in force as on the date of settlement deed dated 07-03-2017 and the consent letters given by them in his favour, on the basis of settlement deed, khatha mutated and other revenue records relating to the property in his name as absolute owner and he is in exclusive possession of item No.4 of "A" schedule

property. The settlement deed is valid and binding on the plaintiff and defendant No.2. As such plaintiff barred from claiming right over item No.4 of "A" schedule properties which already extinguished. Item No.5 of "A" schedule properties purchased by him in his individual capacity which is the self acquired property. There never existed any undivided family property or nucleus or funds at the time of purchase of said property as falsely alleged by plaintiff, hence, prayed for dismissal of the applications with exemplary cost.

12. Defendant No.3 also filed objections stating that he is not the tenant in item No.4 of "A" schedule properties, he is only trustee of a trust M/s. Siddhanth Foundation (R) which was running a college by name Trisha Vidya College of Commerce and Management and Trisha Evening college in the said building. He is not the tenant of the said building. The suit filed against him for grant of temporary injunction from making payment of monthly rent and to deposit the same before the Court which is not maintainable. The tenant M/s. Siddhanth Foundation (R) crediting monthly rent and maintenance of the said building to the defendant No.1 since

the terms have been shifting the Trisha Vidya College of Commerce and Management and Trisha Vidya Evening College to new premises at KVSM Campus at Katapadi and the said building has been handed over to the defendant No.1 by vacating the said building three months prior and already handed over the possession to defendant No.1 who was owner of said building. Defendant No.1 accorded permission, hence prayed for dismissal of the applications with exemplary costs.

13. Heard on both side.

14. The points that arise for my determination are as follows:

1. Whether applicant/plaintiff proves that he has got prima facie case against defendant No.1 and 3?
2. Whether the applicant/plaintiff proves that balance of convenience lies in his favour?
3. Whether applicant/plaintiff proves that if temporary injunction is not granted as prayed for in I.A.No.II to IV, he will be put to great hardship than the defendant No.1 and 3?

4. What order?

15. My findings on the above points are as under:

Point No.1: partly in the affirmative.

Point No.2: partly in the affirmative.

Point No.3: partly in the affirmative.

Point No.4: As per final order

For the following:

REASONS

16. Point No.1 to 3:- For the sake of convenience and in order to avoid repetition of facts, I would like to discuss the above points together.

17. The burden is on the plaintiff to prove the existence of prima facie case as in order to obtain the relief of equity as well as balance of convenience is in his favour. In this context plaintiff in order to establish the same as it is the specific contention of plaintiff that the suit filed for partition which has not been disputed by defendant No.1, but disputing that properties are not joint family properties but his self acquired properties. Moreover, it is the contention of defendant No.1 that item No.1 and 2 of "A" schedule properties have been though jointly purchased in the name of himself, defendant

No.2 and plaintiff jointly, but the plaintiff and defendant No.2 have executed release deed on 07-03-2017 by virtue of general power of attorney executed in his favour on 19-03-2013, accordingly plaintiff and defendant No.2 have no right to question the alleged release deed.

18. So far as item No.3 of the “A” schedule property is concerned which is purchased out of his own self earnings and he settled the said property by executing a registered settlement deed in the name of his wife and he is not at all being the owner of item No.3 of said property, accordingly by virtue of settlement deed dated 28-11-2016 executed in favour of his wife and she is in possession and enjoyment of item No.3 of the property accordingly khatha mutated in her name and he also availed loan by mortgaging the said item No.3 property and item No.1 and 2 of “A” schedule properties and the said loan is now subsisting. But plaintiffs deliberately suppressing the settlement deed executed in his favour and got filed the suit. Unless and until the settlement deed and the release deed have not been questioned, the suit itself is not maintainable.

19. On the other hand, according to plaintiff, the suit properties are purchased out of joint family funds, accordingly, all the properties acquired the nature of joint nucleus, as such they are entitled for share. Moreover, though general power of attorney executed before notary in favour of defendant No.2 on 19-03-2012, but the said general power of attorney was cancelled by issuing notice by registered post acknowledgement due to the permanent residential address of defendant No.1 and also intimated and directed defendant No.1 not to act on the said cancelled power of attorney. Moreover, the release deed executed not by them, but by virtue of power of attorney which was cancelled, accordingly the defendant No.1 got executed the document himself after cancellation hence it is not binding on them. The registered power of attorney dated 07-06-2014 is cancelled on 03-03-2017 and another registered power of attorney dated 25-06-2013 also cancelled on 03-03-2017 and also issued paper advertisement on 07-03-2017 in Vijaya Karnataka daily news paper and also by issuing legal notice and even prior to issuing of legal notice, orally informed to defendant No.1. Therefore, defendant No.1 has no right to represent on his behalf as well

as on behalf of defendant No.2 in respect of “A” and “B” schedule properties.

20. No doubt the grant of temporary injunction primarily depends on the existence of prima facie case determining such question, the Court guided more and more by the apparent strength or otherwise of plaintiff's case made out by the affidavit evidence and other materials. So also, is bound to consider balance of convenience to grant or refuse an order of temporary injunction. The objection of injunction is to keep the things in status-quo, so that if at the hearing when plaintiff succeed in the suit in the meanwhile defendants have to be prevented from dealing with the property in such a way as to meet the judgment in effectual. The most important is not the probability of the success of the plaintiff, but the existence of the serious question to be decided and though the relief of grant of injunction is both temporary and discretionary. The expression of prima facie in this context being understood in the sense that it is not frivolous or vexatious, but involves serious matter to be investigated, the rules therein the administration, discretionary relief admit of being formulated

to discover whether plaintiff's case is frivolous or vexatious, if it is not decided in whose favour the balance of convenience lies and if the balance of convenience is fairly even then it would be proper to take into account in tipping the balance the relevant strength of each parties case as revealed by the affidavit evidence adduced on hearing of the application.

21. In the present case, the dispute is in respect of the acquisition of the properties are concerned wherein, it is the contention of plaintiff that the suit schedule properties are the joint family properties and according to defendant No.1, suit schedule properties are not the joint family properties. On the other hand, which are his self acquired properties and he individually acquired the properties, but the defendant No.1 based his contention by virtue of release deed, wherein in order to prove the existence of prima facie case, plaintiff got produced registered sale deed executed by H. Ramakrishna Kadiyala in favour of A. Shakunthala Kodgi dated 18-05-1974 and Shakunthala Kodgi is none other the mother of plaintiff and defendants. The recitals of said sale deed clearly establishes that their mother is also owning some properties.

Another sale deed dated 13-11-1975 executed by Ramakrishna Kadiyala in favour of mother of plaintiff and defendants. The certificate issued by Chief Manager, Syndicate Bank in favour of father of plaintiff and defendants. The receipt dated 09-03-1987 issued by mother of plaintiff and defendants in favour of K.V. Samaga for ₹.19,750/- so also the receipt dated 07-03-1980 for ₹.25,000/-. The plaintiff also produced the registered deed of settlement executed by the mother of plaintiff in favour of defendant No.2 dated 05-03-2004 and also registered deed of transfer executed by defendant No.2 in favour of defendant No.1 dated 29-06-2005 and registered release deed dated 07-03-2017 executed by plaintiff and defendant No.2 in favour of 1st defendant.

22. On perusal of the copy of registered release deed dated 07-03-2017, wherein the release deed according to defendant No.1 executed by plaintiff and defendant No.2, but according to plaintiff all the properties purchased during 2008 as himself and defendant No.1 and 2 are not having any permanent job. Moreover, the property belong to their mother at Indrali, Manipal and also their mother acquired some properties from

her mother at Kalladka and his father also acquired some properties. All the properties were alienated and have purchased 50 cents in which they have made 40 apartments and out of 40 apartments, 39 apartments were sold, so also the property purchased at Bangalore only they came to know during 2017 in respect of mis-management by defendant No.1, accordingly they have cancelled the general power of attorney. But no recitals in respect of release deed with regard to the cancellation, but after cancellation of general power of attorney dated 19-03-2012 and moreover in the settlement deed dated 07-03-2017 in respect of item No.4, defendant No.1 himself released on behalf of plaintiff No.1 and defendant No.2, but the power of attorney was given in respect of item No.4, but not in respect of item No.6. Moreover, no document produced to show the power of attorney given by plaintiff and defendant No.2 with regard to the property existing at Udupi. When the general power of attorney itself is cancelled which has not been admitted by defendant No.1 whether the general power of attorney cancelled or the release deeds have been executed by plaintiff and defendant No.2 in favour of defendant No.1 as according to plaintiff, the release deeds itself are non-est on

the cancellation of the power of attorney dated 19-03-2012, accordingly not binding.

23. On perusal of the settlement deed and release deed, it appears the said documents have been hurriedly got executed by defendant No.1 by himself in his favour as general power of attorney holder of plaintiff and defendant No.2. Moreover, the execution and existence of these documents have to be considered only during full fledged trial. Moreover, the crux of the matter between the parties is in respect of acquisition of property as well as entitlement of share and the burden is on the plaintiff as well as defendants to prove as according to plaintiff, the suit schedule properties are joint family properties. On the other hand, it is the specific contention of defendant No.1 that suit schedule properties are self acquired properties. Such being the thing, if defendant No.1 is restrained from alienating the suit schedule property till disposal of the suit, no injustice caused to defendant No.1. Though plaintiff contended that defendant No.1 has to be restrained from constructing any building, permanent structure or alteration, but nothing has been produced to

prove any construction or the alteration made by defendant No.1. Further, the plaintiff contended that directing defendant No.3 to deposit the rent before the Court, wherein it is specifically pleaded that defendant No.3 has vacated and handed over the property. Moreover nothing has been produced by the plaintiff in respect of the rent payable by defendant No.3 to defendant No.1 and in the absence of documentary evidence it not holds good to direct the defendant No.3 to deposit the amount before the Court. Moreover, if on I.A.No.II restrained the defendant No.1 from alienating the suit schedule property, no injustice caused to either parties.

24. On perusal of the sale deed dated 26-03-2012 executed by defendant No.1 so also sale deed dated 16-01-2013, 01-04-2013, 28-06-2013 and 13-06-2014, all these documents establish the execution of sale deeds by defendant No.1 on his behalf as well as on behalf of plaintiff and defendant No.2 as a power of attorney holder as per the general power of attorney executed on 19-03-2012. The dispute is in respect of cancellation of said sale deed and whether the transaction made by defendant No.1 based on 19-03-2012 which is

general power of attorney, as according to plaintiff already cancelled. But defendant No.1 got obtained the documents on 07-03-2017 itself and on perusal of documents produced by plaintiff which probablise the case of plaintiff rather the case of defendant No.1. If at all defendant No.1 contended and produced the documents to show that he purchased the property out of his self earnings, but he is not disputing that item No.1 and 2 of "A" schedule property purchased jointly in the name of plaintiff, defendant No.1 and himself and he based his defence mainly on release deed, general power of attorney and settlement deed.

25. But on perusal of the settlement deed and release deed which have been executed as defendant No.1 himself in his favour on behalf of plaintiff and defendant No.1 as their general power of attorney and if at all the said properties are purchased out of self earnings, then what made the defendant No.1 to hurriedly obtain the documents, if at all the plaintiff and defendant No.1 executed the documents, accordingly the plaintiff establishes the prima facie case to grant an order of injunction wherein they cancelled the general power of

attorney as claimed by defendant No.1 dated 07-07-2010, 16-01-2008, 19-03-2012 by issuing a legal notice dated 04-03-2017 which was issued by registered post for which also postal receipt produced wherein three closed envelopes with endorsement as unclaimed, the defendant No.1 not disputing the address and only after issuance of notice the release deed got registered on 07-03-2017 which creates doubt in the mind of Court that what is the necessity to the defendant No.1 to obtain the same which clearly indicates that having knowledge of notice as according to plaintiff they have also orally intimated to defendant No.1 in respect of cancellation of power of attorney which corroborates the execution of release deed dated 07-03-2017. Furthermore, the said notice also duly served to Sub-Registrar, Ulsoor, Bangalore. Though the parties disputing the acquisition of properties by their mother and father, but on perusal of the documents, wherein their mother Shakunthala Kodgi through G.P.A., holder defendant No.1 also alienated several properties relating to Kodgi Sai Sadana, Indrali Udupi.

26. On perusal of documents produced from the parties and the decisions cited by the learned counsel for plaintiff are aptly applicable to the present case on hand. Accordingly there is balance of convenience in favour of plaintiff and if the defendant No.1 is not restrained from alienating the suit schedule property, plaintiff will be put to irreparable loss, damage and injury and more inconvenience caused to plaintiff rather than defendant No.1. Accordingly, ***I answer point No.1 to 3 as partly in the affirmative.***

27. Point No.4:- For the above reasons, I proceed to pass the following:

COMMON ORDERS

The application filed by the plaintiff i.e. I.A.No.II under Order XXXIX Rule 1 and 2 r/w sections 94(e) and section 151 C.P.C., is hereby allowed.

The defendant No.1 is hereby restrained from alienating, encumbering or creating charge over the plaint "A" and "B" schedule properties or any portion thereof till disposal of the suit.

The application filed by the plaintiff i.e. I.A.No.III under Order XXXIX Rule 1 and 2 r/w sections 94(e) and 151 C.P.C., praying to restrain defendant No.1 from constructing any building/permanent structure or alteration of any existing building in the plaint "A" and "B" schedule property or any portion thereof is hereby dismissed.

The application filed by the plaintiff i.e. I.A.No.IV under Order XXXIX Rule 1 and 2 r/w sections 94(e) and 151 C.P.C., praying to restrain defendant No.3 to payment of monthly rent to defendant No.1 till disposal of the property or ending of his lease period and direct him to deposit the same before this Court is hereby dismissed.

Cost will follow the result of the suit.

(Dictated to the Stenographer, computerized by him, corrected, signed and then pronounced by me in the open court on this the 24th day of September 2021).

(Smt. Shakunthala S.)
Prl. Sr. Civil Judge and CJM.,
Udupi.