

IN THE COURT OF THE SENIOR CIVIL JUDGE, AT KUDLIGI.

Present: Sri B.S. HONNASWAMY, B.A., LL.M.,
Senior Civil Judge & JMFC, Kudligi.

DATED THIS THE 19TH DAY OF NOVEMBER, 2015.

O.S. No: 34/2015

PLAINTIFFS:-

1. Smt. P.M.Jarina Begum, W/o. P.Mehaboob, aged: 50 years, housewife, R/o. Kottur town, now residing at C/o Farida Begum, Door No.145, opposite to System Alloys, 1st main, 3rd Cross, Land Mark Ganesh Bakery, Nagavara, Thanisandra, Bangalore-560045 and others.

(By Sri. T.K., Advocate).

//VS//

DEFENDANTS:-

1. The Karnataka State Financial Corporation (KSFC), Hospet road branch, Ballari represented by its Asst. General Manager and another.

(By Sri. M.A.M., Advocate for D-1 and Sri S.G.K., Advocate for D-2)

ORDERS ON I.A.No:2

The plaintiffs have filed I.A.No.2 U/o.39 Rule-1 and 2 of CPC and prays to grant Temporary Injunction restraining the defendant No.2 not to alienate the suit schedule property.

2. In the affidavit, the plaintiff No.1 has submitted that, she swearing this affidavit on behalf of other plaintiffs also. She submitted that, the above suit is filed by them challenging the sale deed dated 30.7.2012 executed by the first defendant in favour of 2nd defendant in respect of the suit schedule property on various grounds. She submitted that, the KSFC ought to have executed re-conveyance/release deed in their favour in respect of the suit schedule property as the loan raised has been fully cleared by one time settlement. Instead of that, the KSFC has executed the sale deed in favour of 2nd defendant thereby depriving their valuable property rights, hence they have filed the suit urgently to protect their right. She further stated that, 2nd defendant is making hectic efforts to disposes of the schedule property or is likely to create encumbrance over it, in which case they have to unnecessarily fight the litigations with third parties and there will be scope for multiplicity of proceedings. If the application is allowed, no hardship and injury will be caused to the defendants. On the other hand, if the application is not allowed, irreparable injury and hardship will be caused to them. Hence, they pray this court to allow the application.

3. The defendant No.2 has filed objection to I.A.No.2 and submitted in the objection that, the application filed by the plaintiffs seeking for temporary injunction restraining the 2nd defendant from alienating, transferring, disposing of or creating any encumbrances over the suit schedule property during the

pendency of the above suit is not maintainable both in law and on facts and therefore, the application filed by the plaintiffs is liable to be rejected. Further the plaintiffs when claiming the rights under gift deed, which is a fraudulent and collusive document and the question of seeking for grant of temporary injunction is not permissible in law. Further the application filed by the plaintiffs is misconceived and unsustainable in law and it is liable to be rejected. The plaintiffs are not entitled any relief, since the defendant No.2, is the absolute owner in possession and enjoyment of the Industrial Land measuring 1.13 acres with buildings formed in survey No.512 and 514, they have suppressed the material facts and not approached this court with clean hands. The plaintiffs have no manner of right, title, interest and possession of an inch of property in survey Nos.512 and 514 of Kottur, measuring 1.13 acres which were converted for non-agricultural purpose long back and this defendant and another Karadi Kotrayya are in possession and enjoyment of their respective properties as its absolute owners. The plaintiffs by suppressing the real fact have filed the suit by making false allegations and therefore the application as well as the suit is liable to be dismissed. It is admitted that, the averments made in para-2 of the affidavit that the suit is filed by the plaintiffs challenging the sale deed dated 30.7.2012 executed by the 1st defendant in favour of the 2nd defendant in

respect of the suit schedule property on various grounds.

4. It is further stated in the objections that, it is admitted that, the KSFC ought to have executed re-conveyance/release deed in their favour in respect of the suit schedule property as the loan raised has been fully cleared by one time settlement. Instead of that, the KSFC has executed the sale deed in favour of 2nd defendant thereby depriving their valuable property rights and they have filed the suit urgently to protect their rights is absolutely false, illegal and incorrect. No right, title and interest much less possession proved by virtue of the alleged gift deed which is a fraudulent and collusive document. It is further admitted that, the 2nd defendant is making hectic efforts to dispose of the schedule property or is likely to create encumbrance over it, in which case they have to unnecessarily fight the litigations with third parties and there will be scope for multiplicity of proceedings is imaginary and baseless. The plaintiffs to obtain an order of injunction themselves created the story as stated by them. Hence, there is no merit in the allegations.

5. He further submitted that, the 2nd defendant purchased the property in the year 2000 and he has been enjoying the same as an absolute owner and after lapse of 14 years the plaintiffs by virtue of collusive and fraudulent document claiming the rights on the instigation of vested interest by

suppressing the material facts. Therefore, the plaintiffs are not entitled to any interim order as sought in I.A.No.2. The 2nd defendant is the absolute owner in possession and enjoyment of the property measuring 1 acres 13 cents converted industrial land in Sy.No.512 and 514 of Kottur town. The said property was put for public auction by the 1st defendant in the year 2000 by exercising power under Section 29 of the SFC Act for recovery of dues. Since the 2nd defendant was one of the bidder, the price quoted by him was higher than others, which was accepted and the 1st defendant communicated and confirmed the sale and informed to the 2nd defendant to deposit the sale price. The 2nd defendant had deposited the sale consideration amount to the 1st defendant and he has been put in possession of the entire industrial open land with buildings and worn-out machineries as shown in the sale agreement and the 2nd defendant established Ginning and Decorticating factory by extending the building measuring 18 feet X 200 feet and had obtained power connection from GESCOM by clearing all dues and so also Municipal taxes. The 2nd defendant had availed loan from 1st defendant for working capital by giving security of the property purchased by him and also by giving personal additional security of his wife's property. Since the loan was not repaid in time, the KSFC had taken over the entire industrial land with building and machineries thrice by exercising power under Section 29 of the

SFC Act and thereafter in the year 2012 the 2nd defendant discharged entire liabilities and has taken back the entire seized property. The 1st defendant in the year 2013 executed sale deed in favour of the 2nd defendant in respect of the property sold in public auction in favour of 2nd defendant. The 2nd defendant is in possession and enjoyment of the entire property purchased by him in public auction and has been paying property tax to the Kottur Pattan Panchayath and the Pattan Panchayath has assessed the property for municipal tax and also given door No.426 and the owner name is shown of 2nd defendant and the nature of building. Further, in the year 2002, one Karadi Kotraiah had tried to obstruct the usage of Road and the 2nd defendant complained the said fact to the 1st defendant and the competent officer of the KSFC had informed the Chief Officer, Kottur Pattan panchayath to take necessary action against one Karadi Kotraiah and to see that there cannot be any obstruction for usage of road. The plaintiffs mother-in-law Peeramma had leased away the property in favour of M.M. Oil Industries, which was a partnership firm and the said Peeramma and her sons are partners of the said firm. The subject matter of the property of sale deed had given as a security to the 1st defendant by borrowing loan on behalf of M.M. Oil Industries. The owner of the property i.e., Peeramma had executed lease deed by authorizing the 1st defendant the right to

transfer the property given as security on behalf of the firm for recovery of dues. Since the firm did not repay the loan borrowed from the 1st defendant, the property in dispute given as security was brought for sale for recovery of dues by exercising power under Section 29 of SFC Act by the 1st defendant. The subject matter of the property sold in public auction in favour of the 2nd defendant in the year 2000. The said sale transaction has not been questioned by Peeramma and her sons at any point of time. The Peeramma in colluding with plaintiffs to harass the defendant No.2 got up a fraudulent document in the form of gift deed based on which the present plaintiffs claiming the rights to declare that they are the owners of the suit schedule property by virtue of the gift deed. When Smt.Peeramma has no right, title and interest and possession, the question of executing gift deed in favour of the plaintiffs and based on which claiming right, title and interest by the plaintiffs does not arise. No right, title and interest is conveyed over the plaintiffs by virtue of alleged fraudulent gift deed. The entire claim made by the plaintiffs is imaginary, baseless and not sustainable in law. The suit filed by the plaintiffs itself is not maintainable and the question of granting injunction does not arise and further the suit is not maintainable in view of not fulfilling the mandatory requirements of law. Hence, he prayed this court to dismiss the application.

6. Heard the arguments on both sides.
7. On the above said pleadings of both the parties, the following points that arise for my consideration are.
 1. **Whether the plaintiffs prove that, they are having prima facie case for grant of T.I.?**
 2. **Where does the balance of convenience lies?**
 3. **Who will be put to irreparable loss and injury if injunction is granted?**
 4. **What order?**

8. My answers to the above Points for consideration are:-

Point No:1 : Is in the negative.

Point No:2 : Balance of convenience lies in favour of
defendant No.2.

Point No.3 : Defendant No.2 will be put to irreparable
loss and injury.

Point No.4 : Is as per the final order,
for the following:-

REASONS

9. **POINT No.1 to 3:-** As these points are inter connected to each other, hence, I would like to discuss these points together at one stretch in order

to avoid repetition of facts.

10. The plaintiffs have filed a suit against the defendant for cancellation of registered sale deed dated 30.7.2012 came into existence in between the defendant No.1 and 2 in Sy.No.512 and 514. The case of the plaintiffs is that, after the death of P.Mabu Sab during the year 1990 his wife Smt.P.Peeramma becomes the owner of the said land as his legal heir. The plaintiffs are the daughter-in-law's of said P.Peeramma. The suit schedule property bearing Sy.No.512 measuring 1.15 acres which is morefully described in the schedule was in possession of said P.Peeramma as of owner. The plaintiffs mother-in-law P.Peeramma was gifted the land bearing Sy.No.512 measuring 1.15 acres which is the subject matter of the suit, in favour of the plaintiffs through registered gift deed on 5.2.2009 and the said registered gift deed was prepared by Prakash Rao document writer as per the oral instruction given by the donor Smt.P.Peeramma in the presence of her sons P.Mabu Sab, P.Raju and P.Chaman Sab and it was got registered before the Sub-Register office, Kudligi and Smt.P.Peeramma had executed the said document with her own will and wish without any force or compulsion and on the very same day she delivered the possession of the

same in favour of plaintiffs. Since then the plaintiffs are in possession and enjoyment of the suit property in their own right, title and interest. The plaintiffs original native place is Kottur town and now they scattering here and there to eak out their livelihood and living with their respective husbands as mentioned in the cause title. The plaintiffs have produced the following documents:

1. Xerox copy of gift deed dated 2.2.2009 (as original is in O.S.No.21/2011 on the file of the Civil Judge & JMFC at Kudligi)
2. Sale deed dated 30.7.2012 which is marked as Ex.P.23 in O.S.No.28/2009 on the file of the Civil Judge & JMFC at Kudligi.
3. ROR of Sy.No.512 measuring 1.15 acres for the year 2014-15.
4. Xerox copy of letter dated 8.1.2013 addressed by the defendant No.1 to the Sub-Registrar, Kudligi.
5. Demand register extract of door No.8/426 which is marked as Ex.P.2 and P.4 in O.S.No.28/2011 on the file of the Civil Judge & JMFC at Kudligi.
6. Xerox copy of letter addressed by the Assistant Divisional Manager, KSFC Bellary addressed to P.Peeramma and sons M/s. M.M. Oil Industry, Kottur, Kudligi Taluk, Ballari District.

7. Xerox copy of receipt issued by KSFC, Bellary for having received sum of Rs.8,83,270/- from M.M. Oil Mills, Kottur, Kudligi Taluk, Bellary District.
8. Xerox copy of letter addressed by KSFC, Bellary addressed to M.M. Oil Mills Industry, Kottur town, Kudligi Taluk, Ballari District.
9. The letter issued by the Assistant General Manager, KSFC Bellary address to P.Mabu Sab, partner of M.M. Oil Mill, Kottur, Kudligi Taluk, Ballari District.
10. Mutation register copy No.120/2008-09.
11. The important document is gift deed dated 5.2.2009 executed by P.Peeramma, W/o. P.Mabusab in favour of Jarina Begum and others in respect of said suit property bearing Sy.No.512 measuring 1.15 acres, though it is a registered document. RTC in Sy.No.512 standing in the name of K.M.Kotrayya, S/o. Karooru Mudugal Matada Kotrappa, Kottur for the year 2014-15. Xerox copy of the application given to the Sub-Registrar, Kudligi for execution of re-conveyance/Release deed dated 6.1.2003 in favour of M/s. M.M. Oil Industries, Kottur and self declaration form produced for the year 2007-08 to 2008-09 dated 26.2.2009 standing in the name of defendant No.2. Legal notice issued by the said P.Peeramma

and receipt issued by the KSFC for the settling amount of Rs.8,83,270/-.

On 24.11.2012 the letter which shows that the loan amount has been disposed and another letter dated 26.9.2012 the information application given by P.Mehaboob, Partner of M.M. Oil Industries and application filed under R.T.I., with regard to Sy.Nos.512, 513 and 514 situated at Kottur. Mutation extract also produced in Sy.No.512 standing in the name of Jarina Begum, W/o. P.Mehaboob. As per the gift deed dated 5.2.2009 the said names have been entered.

12. The case of the defendants is that, the plaintiffs have not disclosed the true and correct facts and suppressed the important material facts. The plaintiffs already filed O.S.No.21/2011 against the defendants in respect of the same subject matter and this is the subsequent suit it cannot be considered. But the plaintiffs counsel filed I.A.No.6 U/o.23 Rule-1 r/w S.151 of CPC and prays to withdraw the said suit in O.S.No.21/2011 pending before the Civil Judge, Kudligi and said Civil Judge, Kudligi allow the I.A.No.6 and ordered that, the plaintiffs are withdraw the suit as not pressed. Further the defendant has taken specific contention that, except seeking cancellation of sale deed dated

30.7.2012, all other reliefs are claimed in O.S.No.21/2011. The defendant No.2 has stated in para-6 of the written statement that, the averments made in para-5 of the plaint that after the death of P.Mabu Sab during the year 1990 his wife Smt.P.Peeramma becomes the owner of the said land as his legal heir and the plaintiffs are the daughter-in-laws of one Smt.P.Peeramma and the suit schedule property bearing Sy.No.512 measuring 1.15 acres which is more fully described was in possession of said P.Peeramma as of owner is absolutely false and incorrect. Since P.Peeramma was not the only legal heir to the deceased P.Mabu Sab on the date of death of her husband and the deceased P.Mabu Sab left behind him his wife and children and therefore, the contentions of the plaintiffs that the wife of Mabu Sab i.e., P.Peeramma becomes the owner of the said land as his legal heir is absolutely false and incorrect and the plaintiffs with an intention to avoid legal transactions have making false allegations. The defendants also denied the cause of action is not correct. Further they have stated that, the plaintiffs and their family members discharged the loan of defendant No.1. When the application was moved in O.S.No.21/2011 to implead the defendant No.1 as party in the said suit and the said

application was rejected by the court is admitted by the said defendants. Further, the defendant No.2 has taken contention that, the 2nd defendant is the absolute owner in possession and enjoyment of the property measuring 1 acres 13 cents converted industrial land in Sy.No.512 and 514 of Kottur town. The said property was leased out in favour of M/s M.M. Oil Industries by its owners by registered Lease Deed dated 24.1.1992 and the Lessor also conferred the right to alienate and any action with the prior permission of KSFC and the loan was borrowed by M/s M.M. Oil Industries, which commits default and leased property was brought for sale by exercising power under Section 29 of the SFC Act, 1951 in the year 1998 by giving notice through Prajavani Kannada Daily Newspaper dated 20.7.1995, 24.9.1995, 24.2.1998 and personal notice to Smt.P.Peeramma and the Firm and in view of non payment of dues by the Firm, the property Leased to M/s M.M. Oil Industries by the 1st defendant exercising power under Section 29 of the SFC Act and sold to this defendant in the year 2000. Since the 2nd defendant was one of the bidder and the price quoted by him was higher than others, which was accepted and the 1st defendant communicated sale confirmation dated 30.3.2000 and informed to deposit the sale price. The

2nd defendant deposited the sale consideration amount to the 1st defendant and this defendant has been put in actual possession of the property and the 2nd defendant established Ginning and Decorticating factory and by extending the buildings. The 2nd defendant obtained power connection from GESCOM by clearing all dues and so also Municipal Taxes. The 2nd defendant had availed loan from 1st defendant for working capital by mortgaging the property purchased by him and also the property of his wife as personal guaranty. Since the loan was not repaid in time, the KSFC had taken over the physical possession of the property thrice by exercising power under Section 29 of the SFC Act, during the year 2006 to 2009 and thereafter in the year 2010 the 2nd defendant discharged entire liabilities and the 1st defendant restored the seized property with unit to the 2nd defendant. Further, the 1st defendant in the year 2012 had executed absolute sale deed in favour of the 2nd defendant in respect of the property, which was sold to the 2nd defendant in the public auction. The 2nd defendant was and has been in actual possession and enjoyment of the entire property purchased by him in public auction and has been paying property tax to the Kottur Pattan Panchayath and property number has been given in the name

of 2nd defendant, showing him as owner of the property and thereby the 2nd defendant has become the absolute owner in possession of the property measuring 500 X 100 feet as described in the sale deed. In the year 2002, one Karadi Kotraiah had tried to obstruct the usage of Road and the 2nd defendant complained the said fact to the 1st defendant and the competent officer had informed the Chief Officer, Kottur Pattan Panchayath to take necessary action against one Karadi Kotraiah and to see that there cannot be any obstruction for usage of road. The plaintiffs mother in law Smt.P.Peeramma had leased away the property in favour of M.M. Oil Industries, which was a partnership firm and the said Peeramma and her sons are partners of the said firm. The subject matter of the property of sale deed had given as a security to the 1st defendant by borrowing loan on behalf of M.M. Oil Industries in the year 1992. The owner of the property i.e., Peeramma had executed lease deed by expressly authorizing the Lessee right to transfer/Mortgage and other conditions and the KSFC for recovery of its dues sold the property given as security and these facts well within the knowledge of Smt.P.Peeramma and the plaintiffs and their husbands and by suppressing all these facts filed the present suit. The subject matter of

the property sold in public auction in favour of the 2nd defendant in the year 2000. The said sale transaction has not been questioned by Smt.P.Peeramma and her sons at any point of time. The Peeramma by colluding with plaintiffs to harass the defendant No.2, got up a fraudulent document in the form of gift deed based on which the present plaintiffs claiming the rights to declare that they are the owners of the suit schedule property, injunction and for possession based on gift deed, which has no legal sanctity. Shen Smt.P.Peerama and her sons have no right, title, interest and much less possession over the property, the question of executing gift deed in favour of the plaintiffs and based on which claiming right, title and interest and possession highly illegal, without authority of law and objectionable one. Further, no right, title, interest and possession acquired by the plaintiffs by virtue of alleged fraudulent, created and fabricated gift deed, since the donor herself has no right, title, interest and possession over the property. The entire claim made by the plaintiffs is imaginary, baseless and not sustainable in law. The present suit is filed 15 years of sale, who have no locus standi to bring the suit and the plaintiffs are stopped to seek for the relief. The suit filed by the plaintiffs is not

maintainable because of non-joinder of necessary parties.

13. In the year 2000 the defendant No.1 has sold the suit property in favour of defendant No.2 through auction and the defendant No.2 has purchased the said property. But after lapse of 15 years the plaintiffs have questioned the said sale deed stating that there is already gift deed in the year 2009. But the said property was auctioned in the year 2000. In the year 5.2.2009 the gift deed was came to be executed at the oral instructions given by the owner Smt.P.Peeramma. But what was the hurdle to the plaintiffs to produce the gift deed before KSFC and the said gift deed came to be created on 5.2.2009. By knowing this fact by the plaintiffs, already said property has been sold by the defendant No.1 to the defendant No.2, the question of executing re-conveyance of sale deed dated 6.1.2003, because in the year 2000 the property was auctioned. The plaintiffs have no right, title and interest over the said property. As per the RTC extract, it is clearly goes to show that, after purchasing the property by the defendant No.2 in the year 2002, he is the absolute owner of the suit property. After lapse of 14 years, the plaintiff filing the present suit seeking cancellation of said sale deed, though it is barred by

law of limitation and in Sy.No.512 and 514 it was converted for industrial and it was put auction by the defendant No.1 in the year 2000. As per Sec.29 of the SFC Act for recovery of dues it was auctioned and the first defendant was put in possession of the entire industrial area as per the sale agreement between the defendant No.1 and 2. In the year 2013 the first defendant has executed the sale deed in favour of defendant No.2 in respect of the property sold in public auction and the 2nd defendant has paid the Municipality tax and also given the door No.426. Hence, for the above reasons, the plaintiffs have not made out a prima facie case and it is only an after thought after executing the said sale deed the said gift deed came to be existence and balance of convenience lies in favour of defendant No.2. If really injunction is granted, the defendant No.2 would be put to great hardship, which cannot be compensated in terms of money. Hence, the plaintiffs have not made out a ground for grant of Temporary Injunction. Hence, I answer the above points No:1 to 3 accordingly.

14. POINT No:4:- For the aforesaid discussions and reasons stated above on the above points, I proceed to pass the following:-

ORDER

I.A.No:2 filed by the plaintiffs U/o.39

Rule-1 and 2 of CPC is hereby rejected.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 19.11.2015 at Kudligi)

(B.S. HONNASWAMY),
Senior Civil Judge, Kudligi.