

KABI200000042023



IN THE COURT OF THE CIVIL JUDGE & JMFC.,

AT: HAGARIBOMMANAHALLI

DATED THIS THE 6th DAY OF DECEMBER 2024

: **PRESENT:**

SRI. **SAYED MOHIUDDIN URF KHAWAJA PEERAN.**, BA. LLB.,(Spl.)

CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.

O.S.No.4/2023

**PLAINTIFF/s : U.Kotresha @ Mulimani Kotresh
S/o U.Shekharappa @ Mulimani
Shekharappa,**
Aged about: 45 years, Occ:Agriculturist,
R/o Uluvatti Village, Hagaribommanahalli
Taluk, Vijayanagara District. Now
R/o Boranahalli Village, Kottur Taluk,
Vijayanagara District.

Vs

DEFENDANT/s : 1) Kasturamma W/o Hotti Ramappa,
Aged about: 65 years, Occ:Agriculturist,
R/o Uluvatti Village, H.B.Halli Taluk,
Vijayanagara (Ballari) District.
2) **Ramesha S/o Umappa,**
Aged about: 40 years, Occ:Agriculturist,
R/o Uluvatti Village, H.B.Halli Taluk,
Vijayanagara (Ballari) District.

I.A.No.I

**APPLICANT/PLAINTIFF: U.Kotresha @ Mulimani Kotresh
S/o U.Shekharappa @ Mulimani
Shekharappa,**

(Rep. by Sri.H.H., Advocate)

V/s

**RESPONDENTS/DEFENDANTS:Kasturamma W/o Hotti Ramappa
and another,**

(Rep. by Sri.A.K., Advocate)

ORDER ON I.A.No.I

The plaintiff has filed the IA No.I under Order 39 Rule 1 and 2 R/w Sec.151 of CPC seeking the relief of temporary injunction to restrain the defendant No.1 and 2 from interfering with his peaceful possession and enjoyment over the suit schedule property bearing Khata No.114 measuring 80 X 50 Sq.Ft., situated at Uluvatti Village, Hagaribommanahalli Taluk till disposal of the suit.

2. In the accompanying affidavit to the IA., it is stated by the plaintiff that, he has filed the present suit against the defendants for the relief of declaration of title and permanent

injunction with respect of the suit schedule property. He is the absolute owner and in possession of the suit schedule property. Originally the suit schedule property belongs to his father Mulimani Shekharappa S/o Bagalappa. His father gifted the said property in his favour under the registered gift deed dated 24.02.2011, from the date of gift deed he is in possession and enjoyment over the suit schedule property. The Khata of the suit schedule property also changed in his name. The defendants are strangers to the suit schedule property, they are not the neighbours of the suit schedule property. The defendants have no manner of right, title and interest over the suit schedule properties, but they are illegally trying to interfere with his peaceful possession and enjoyment over the suit schedule property. On 10.11.2022 the defendants were tried to dispossess the plaintiff from the suit schedule property, he approached the jurisdictional police station with regard to the alleged obstruction of the defendants, but the police have directed him to approach the Civil Court. Hence, he has filed the present suit along with the I.A. He has made out prima facie case, balance of

convenience lies in his favour. If the temporary injunction order is granted no injustice will be caused to the defendants. If the temporary injunction order is not granted he will be put to hardship. Hence, he prays to allow the IA.

3. After registration of the suit, suit summons and emergent notice on I.A.No.I have been issued to the defendants. The defendants served with the same. In response to the same, they have appeared before the Court through their respective Counsel. The defendant No.2 filed the written statement and defendant No.1 adopted the same. The defendants have filed a memo adopting the written statement as objections to the I.A.No.I. In the written statement the defendants have denied the case of the plaintiff, and further contended that the defendant No.2 is the daughter of defendant No.1. The defendant No.1 purchased the suit schedule property from its lawful owner Uluvatti Chandrappa and Uluvatti Shekrappa under the unregistered agreement of sale dated 23.10.1985 for a sum of Rs.610/- in the presence of elders of the village i.e., Dasara Hanumanthappa, G.Siddalingaiah, Darmappa and Sangappa, and the said

agreement was written by one V.Mallanna. On the date of execution of agreement of sale the possession of the suit schedule property was handed over to the defendant No.1. From the date of execution of agreement of sale, the defendant No.1 is in possession and enjoyment over the suit schedule property. The defendants are using the said property as rickyard. During the life time of said Uluvatti Chandrappa and Uluvatti Shekrappa they never obstructed the defendants possession and enjoyment over the suit schedule property. The defendant No.1 has requested her vendors to come and execute the registered sale deed, but they have not heed the request of the defendant No.1. The plaintiff is not in possession and enjoyment over the suit schedule property. On the basis of the false and created gift deed the plaintiff has filed the present suit. The defendants are reserved the rights to file the suit for Specific performance of contract against the successors of the vendors by name Uluvatti Chandrappa and Uluvatti Shekrappa. The suit filed by the plaintiff is barred by law of limitation. Hence they prays to dismiss the suit as well as IA.

4. Heard Both the side. Perused the records.
5. The following points arise for my consideration:
 1. Whether the plaintiff has made out *prima-facie* case?
 2. Whether the balance of convenience lies in favour of plaintiff?
 3. Whether the plaintiff will be put to irreparable loss and injury, if the order of Temporary Injunction is not granted?
 4. What order?
6. My answers to the above points 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

7. Point No.1 to 3:- As the facts involved in point No.1 to 3 are interlinked together, hence they are taken up together for common consideration.

8. The present suit is filed by the plaintiff against the defendants for the relief of declaration of title and permanent injunction with respect of the suit schedule property.

According to the plaintiff, he is the absolute owner and in possession and enjoyment over the suit schedule property, and the suit schedule property is the ancestral property of his father Mulimani Shekharappa. The said property was standing in the name of his father. Due to love and affection his father has gifted the said property into his name under the registered gift deed dated 24.02.2011. From the date of gift deed he is in possession and enjoyment over the suit schedule property. The records of the suit schedule property also changed into his name, but the defendants are strangers to the suit schedule property. They have no manner of right, title and interest over the suit schedule property, but they are illegally trying to interfere with his peaceful possession and enjoyment over the suit schedule property. Hence, he has filed the present suit along with the present application.

9. The contention taken by the defendants is that, the plaintiff has no manner of right, title and interest over the

suit schedule property. The defendant No.1 and 2 are in lawful possession and enjoyment over the suit schedule property. The defendant No.1 has purchased the suit schedule property from her vendors Uluvatti Chandrappa and Uluvatti Shekrappa under the unregistered agreement of sale dated 23.10.1985 for a sum of Rs.610/-. From the date of execution of agreement of sale they are in possession and enjoyment over the suit schedule property. Hence they pray to dismiss the suit as well as I.A.

10. I have perused the documents produced by the parties. At this stage the plaintiff has produced the Form No.9 and 11A, on going through the same, prima facie it discloses that the suit schedule property is standing in the name of plaintiff. Further the plaintiff has produced the tax assessment extracts of the suit schedule property for the year 2011-12 and 2013-14, in the said documents also the name of plaintiff is entered. The plaintiff has produced the registered gift deed dated 24.02.2011, on going through the same, prima facie it appears that the father of the plaintiff has gifted the suit schedule property in the name of plaintiff.

Further the plaintiff has also produced the tax paid receipts of the year 2010, 2011, 2013, 2014, 2015, 2018, 2019, 2020, 2021 and 2022, on going through the same prima facie it discloses that during the said period the plaintiff has paid taxes to the concerned Gramapanchayath. On going through the said documents prima facie it appears that the plaintiff is in possession and enjoyment of the suit schedule property. The contention of the defendants is that the defendant No.1 had purchased the suit schedule property from her vendors Uluvatti Chandrappa and Uluvatti Shekrappa. The defendants have produced the unregistered agreement of sale dated 23.10.1985, on going through the same it appears that the said document is unregistered document said to be executed by Uluvatti Chandrappa and Uluvatti Shekrappa in the year 1985. At this stage the defendants have not given any explanation that what action they have taken on the basis of said agreement of sale to get execute the registered sale deed with respect of the suit schedule property on the basis of the said agreement of sale. At this stage they have not produced any document before the Court to show that in the year 1985

the suit schedule property was standing in the name of their vendors. The plaintiff has produced the documents which are explained above in detail which include the registered gift deed, on going through the same prima facie it appears that on the basis of the said gift deed he has acquired the possession and title over the suit schedule property and property extracts are also standing in his name. Therefore, I am of the opinion that the plaintiff is in possession and enjoyment over the suit schedule property. The defendants are claiming the possession over the suit schedule property on the basis of unregistered agreement of sale dated 23.10.1985 said to be executed by her vendors. On the basis of said document at this stage it is not possible to hold that the plaintiff is not in possession of the suit schedule property. Whether the defendant No.1 purchased the said property from her vendors, whether the vendors of the defendant No.1 executed the the alleged agreement of sale, and whether the said agreement of sale is admissible in evidence will be decided only after full fledged trial. During the pendency of the suit if the defendants have interfere with the plaintiff's

peaceful possession and enjoyment over the suit schedule property it cause injustice to the plaintiff. The plaintiff has made out prima facie case for granting of temporary injunction and balance of convenience lies in his favour. If the temporary injunction is not granted plaintiff will be put to hardship. If temporary injunction is granted no injustice will be caused to the defendants. On the basis of above reasons and discussions I hold **Point No.1 to 3** in the **AFFIRMATIVE.**

11. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 R/w Sec.151 of CPC is hereby allowed.

The defendants are hereby restrained from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule property till disposal of the suit.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the 6th day of DECEMBER 2024.)

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.

