

IN THE COURT OF SENIOR CIVIL JUDGE & JMFC, INDI

Present: Sri.KOTEPPA KAMBLE

**B.Com., LL.B.,
Sr.Civil Judge & JMFC,
Indi.**

Dated this 2nd day of June, 2026

O.S.No.63/2023

Plaintiffs:

1. Shashikala W/o Madhukar Choudar @
Jadhav and others.

V/s

Defendants:

1. Devendra S/o Pundalik Bosale
& Others.

COMMON ORDER ON I.A.I & II

Applicants/

Ori. Plaintiffs:

1. Shashikala W/o Madhukar Choudar @
Jadhav and others.

(Pleader by Sri.B.V.P.,)

Vs/-

Opponents:

Orgi. Defendants:

1. Devendra S/o Pundalik Bosale
& Others.
(Pleader by Sri.SSB., Advocate)

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Applicant/
Ori. Defendant No.4

1. Preeti W/o Dattatreya Dhavale,
Age: 43 years, Occ: Household work,
R/o Indiranagar, Solapur.
Maharashtra state.

(Pleader by Sri.S.S.B.,)

Vs/-

Opponents:
Orgi. Plaintiffs:

1. Shashikala W/o Madhukar Choudari @
Jadhav, Age: 50 years, Occ: Household work,
R/o Batagunaki, Tq: Indi,
Dist: Vijayapur and Others.

(Pleader by Sri.B.V.P., Advocate)

COMMON ORDER ON I.A.No.I & II FILED
UNDER ORDER 39 RULE 1 & 2 OF CPC

1. I.A.No.1 is filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC for interim injunction order, restraining the defendant No.4 from alienating the suit property till disposal of suit. I.A.No.II is filed by the defendant No.4 under Order 39 Rule 1 and 2 of CPC for

interim injunction order, restraining the plaintiffs from causing obstructions to her peaceful possession and enjoyment of suit property till disposal of suit.

2. The plaintiff No.3 filed her affidavit annexed with the I.A.No.I deposing that, her husband and defendant No.1 did not repay the mortgage money to defendant No.5. The defendant No.5 sold the suit land to defendant No.3 for an amount of Rs.4,06,000/- through a registered sale deed dated 22.03.2022. It is further deposed that, much prior to the said sale deed, an agreement was entered in between the defendant No.3 and 5 for an amount of Rs.35,00,000/- and executed an agreement by receiving advance consideration of Rs.10,00,000/- on 24.02.2022. The sale transaction taken place in between the defendant No.5 and defendant No.3 is not actual sale, but it is only nominal sale and said sale deed is not binding upon the plaintiffs. As the defendant No.5 was not the bonafide purchaser. Her husband and defendant No.1 have not executed sale deed in favour of defendant

No.5. The defendant No.3 in order to escape from the clutches of law, she gifted the suit property in favour of defendant No.4 through a registered gift deed dated 12.08.2022. As the defendant No.5 was not having saleable right. The defendant No.1 and her husband have not conveyed the title to defendant No.5 and the defendant No.5 has not transferred the title of the suit property in favour of defendant No.3. Through the alleged gift deed the title will not transferred in favour of defendant No.4. It is further deposed that the suit property is an ancestral and joint family property of her husband and defendant No.1. The title over the suit property has not been conveyed either to defendant No.3 or to defendant No.4. She further deposed that, the said sale transaction and gift transactions were taken place behind the back and without the knowledge of her husband and defendant No.1. Therefore, the said sale deed and gift deeds are null and void, which are not binding upon the plaintiffs. The plaintiff No.1 and 2 are having 1/4th each share in the

suit property. It is further deposed that, recently the defendant No.1 has left the village, his whereabouts not known. In this regard missing complaint was lodged before the concerned police, till today police have not searched him. Now, the defendant No.3 and 4 are started to obstruct the use and enjoyment of suit lands and they are not ready to transfer the suit property by receiving sale consideration amount. The defendant No.5 illegally transferred the suit property in favour of defendant No.3 and the defendant No.3 has gifted the suit property in favour of defendant No.4. Now, the defendant No.4 is trying to alienate the suit property to others. Therefore, they are having prima-facie case, balance of convenience is tilted in their favour and if the injunction is not granted, they would be put to heavy loss rather than the defendants.

3. Per contra, the defendant No.4 filed her written statement inter-alia, denying the allegations of the plaintiffs. She filed memo for treating her written

statement as objections to I.A.No.I. As the defendant No.4 has filed her counter claim for the relief of declaration and permanent injunction in respect of suit property. She also filed I.A.No.II under Order 39 Rule 1 and 2 of CPC. She filed her affidavit annexed with I.A.No.II deposing that, she is the absolute owner in possession of suit property. Her mother/defendant No.3 has purchased the suit property from defendant No.5. The defendant No.5 had purchased the suit property from defendant No.1 and his brother Vishnu. The defendant No.3 has gifted the suit property in her favour, through a registered gift deed. As such, as per the registered gift deed, she is the absolute owner in possession of suit property. The revenue records are standing in her name. She is in exclusive possession and enjoyment of suit property. Further, she deposed that the plaintiffs are not having any right, title, interest and possession over the suit property. They are unnecessarily trying to obstruct her peaceful possession and enjoyment over the suit

property. She further deposed that, she approached the police in order to take necessary actions against the plaintiffs, but the police have not entertained her complaint saying that the dispute is in civil nature. Further, she deposed that, she wanted to file her independent suit for declaration. However, meanwhile the plaintiffs have filed the present suit. As such, in order to avoid multiplicity of proceedings, she has filed her counter claim and wherein she has fled present I.A.No.II. Further, she has deposed that, she is having prima-facie case, balance of convenience is tilted in her favour and if the injunction is not granted as sought in I.A.No.II, she will be put to untold hardship. Hence, she prays for allowing the I.A.No.II.

4. Heard both sides and perused the records. For having regards to the materials available on record and for having heard the both counsel, the following points would arise for my consideration.

P O I N T S

1. Whether the plaintiffs have made out prima-facie case for granting ad-interim injunction as sought for?
 2. Whether the balance of convenience lies in favor of plaintiffs?
 3. Whether the plaintiffs would suffer irreparable injury if the prayer for interim injunction is not allowed?
 4. Whether the defendant No.4 has made out prima-facie case for granting ad-interim injunction as sought for?
 5. Whether the balance of convenience lies in favor of defendant No.4?
 6. Whether the defendant No.4 would suffer irreparable injury if the prayer for interim injunction is not allowed?
 7. What order?
- 5.** My findings to above points are as under:

Point No.1 to 3 : In the Negative

Point No.4 to 6 : In the Affirmative

Point No.7 : As per the final order,
for the following:

REASONS

6. Point No.1 to 6: Since all these points are inter-linked with each other and same are taken up together for consideration in order to avoid repetition of facts and discussion. This suit is filed by the plaintiffs for the relief of partition and separate possession of their 3/4th share in the suit property land bearing Sy.No.193 measuring 6 acres 34 guntas of Budihal village. It is the case of plaintiffs that the suit property is the ancestral property. It has been inherited by the father of plaintiff No.1 and 2, father-in-law of plaintiff No.3 and father of defendant No.1 as per M.E.No.2067 in the year 2002 i.e., Vishnu Bhosale and defendant No.1. The defendant No.1 and his brother were doing onion seeds business. They have suffered loss in their business. In order to repay loan raised by them, the defendant No.1 and his brother were mortgaged the suit property with conditional sale to Sri.Santosh S/o Ningappa Achchegaon through a registered sale deed. After the death of mortgagee

Santosh, his wife and children have got mutated their names in the revenue records of suit property. Thereafter, they have resold the suit property in favour of defendant No.1 and his brother through a registered sale deed dated 06.05.2015 after receiving mortgage money of Rs.3,81,000/-. Thereafter, the defendant No.1 and his brothers have again become the absolute owners in possession of suit property. Their joint names were mutated in the revenue records as per mutation No. H-69/2014-15. It is further case of plaintiffs that, in the year 2018 in connection with land transaction, the defendant No.1 and his brother have sold suit property in favour of defendant No.5 mortgage by way of conditional sale through a registered sale deed dated 03.08.2018. At that time, the defendant No.5 did not take the signature of the plaintiffs on the sale deed. Therefore, the said sale transaction is not binding upon the plaintiffs. The defendant No.5 for non payment of mortgage money, by the defendant No.1 and his brother. The defendant No.5

has sold the suit property in favour of defendant No.3 for an amount of Rs.4,06,000/- through a sale deed dated 22.03.2022. Further, it is the case of plaintiffs that prior to execution of the sale deed, there was an agreement between the defendant No.3 and 5 for sale of suit property for an amount of Rs.35,00,000/- by receiving advance consideration of Rs.10,00,000/- dated 24.02.2022. As such, the sale consideration mentioned in the sale deed executed by defendant No.5 in favour of the defendant No.3 is not an adequate sale consideration as it was nominal sale. Thereafter, the defendant No.3 in order to avoid legal consequences, she has gifted the suit property in favour of defendant No.4. However, the plaintiffs are in possession of suit property and they are having legitimate share in the suit property. Now, the defendant No.4 is trying to alienate the suit property, so they filed the suit and I.A.No.I herein.

7. On the contrary, the defendant No.4 filed her written statement inter-alia, contending that the

defendant No.1 and his brother have sold the suit property in favour of defendant No.5. Thereafter, the defendant No.5 has sold suit property in favour of defendant No.3 and the defendant No.3 being her mother has gifted the suit property in favour of defendant No.4. As such, she is the absolute owner in suit property. The revenue records are standing in her name. Therefore, she filed written statement along with counter claim, wherein she has filed I.A.No.II.

8. The plaintiffs have produced the ROR of suit property for the year 2002-03, which was jointly standing in the name of defendant No.1 and his brother. It continues till 2006. Further, the plaintiff produced ROR of suit property for the year 2012-13 which was in the name of one Santosh S/o Ningappa Achchegoan as per the sale deed which continues till 2015. They also produced ROR of suit property for the year 2019-20, which is standing in the name of defendant No.5 as per sale deed, which continued till 2001. The plaintiffs also

produced ROR of suit property for the year 2021, which is standing in the name of defendant No.3 as per the sale deed. Further, the plaintiffs have produced ROR of suit property for the year 2022-23 which is standing in the name of defendant No.4 as per gift deed, same is continued till this day. Further, they produced M.R.H-No.7/2022-23 through which the defendant No.3 has gifted the suit property in favour of defendant No.4. They also produced mutation M.R.No.H-57/2021-22 through which as per the sale deed the defendant No.5 has sold the suit property in favour of defendant No.3. The document MR H-69/2014-15 through which the legal heirs of Santosh Ningappa Achchegaon have sold the suit property in favour of defendant No.1 and his brother. He also produced M.R.No.H-18/2018-19 through which the defendant No.1 and his brother have sold suit property in favour of defendant No.5 in the year 2018. They also produced mutation MR H-2/2012-13 through this document, the defendant No.1 and his brother sold the

suit property in the year 2012 in favour of one Santosh Ningappa Achchegaon. The plaintiffs also produced document MR No.2246/2002-03. The joint names of one Shashikala Choudari, Pulabai Nagani and Shantabai Bosale were deleted and only the name of defendant No.1 and his brother were mutated. Further, they produced photocopy of sale deed dated 06.05.2015 through which the legal heirs of Santosh Ningappa Achchegaon have sold the suit property in favour of defendant No.1 and his brother. They also produced sale deed dated 22.03.2022 through which the defendant No.5 has sold the suit property in favour of defendant No.3. Further, they produced the certified copy of gift deed executed by defendant No.3 in favour of defendant No.4. They also produced general power of attorney executed by defendant No.1 and his brother, they also produced death certificate.

9. On the contrary, the defendants have not produced any documents. As per the documents produced by the

plaintiffs themselves, at this stage, it discloses that, in the year 2012 as per M.R.No.H-2/2012-13, the defendant No.1 and his brother Devendra Bosale were sold the suit property in favour of one Santosh Ningappa Achchegoan. As per the case of plaintiffs, the said sale deed is not the actual sale deed, but it is a mortgage deed of conditional sale. However, in the document mutation there is no mention about the mortgage by conditional sale. Further, as per the sale deed dated 06.05.2015, the legal heirs of Santosh Ningappa Achchegoan have sold the suit property again in favour of defendant No.1 and his brother. As per this sale deed, mutation No.M.R.H-69/2014-15 was certified. Again the defendant No.1 and his brother Devendra become absolute owners in possession. As per the case of plaintiffs, the defendant No.1 and his brother have executed a mortgage by conditional sale in favour of defendant No.5, but said sale deed is not produced. As per the said sale, the name of defendant No.5 was mutated to the revenue records. If

the sale deed alleged to be the mortgage by conditional sale said to have been executed by defendant No.1 and his brother in favour of defendant No.5 would produced, then it would be consider as mortgage by conditional sale. As such, at this stage, in the absence of the said document it is difficult to believe that it was mortgage by conditional sale. At this stage, there is no materials to show that, it was mortgage by conditional sale. If the said transaction was mortgaged by conditional, then the plaintiffs could have filed suit for redemption of mortgage, but they have filed the present suit for the relief of partition and separate possession.

10. Furthermore, as per the sale deed dated 22.03.2022, the defendant No.5 has sold suit property in favour of defendant No.3 for an amount of Rs.4,06,000/- and on the date of sale deed, the possession has been handed over to the defendant No.3. Accordingly, the mutation M.R.No.H-57/2021-22 was certified. In the said sale deed also nothing has been mentioned about the

mortgage by conditional sale as alleged by the plaintiffs. Further, as per the gift deed dated 12.08.2022, the defendant No.3 has gifted the property in favour of defendant No.4 and mutation M.R.No.H-7/2022-23 was certified. Now the suit property is standing in the name of defendant No.4 as on the date of suit. For having regards to the documents produced by the plaintiffs themselves, at this stage, it discloses that the defendant No.4 is in actual possession of suit property as on the date of suit. If the plaintiffs would have produced the sale deed executed by defendant No.1 and his brother in favour of defendant No.5, then it would reveal that, whether the transaction takes place between defendant No.1 and his brother with defendant No.5, was a absolute sale or mortgage by conditional sale. In the absence of sale deed, it is difficult to hold that it was a mortgage by conditional sale as claimed by the plaintiffs. Furthermore, as per registered documents at this stage, discloses that the defendant No.5 has acquired title. Thereafter, it was pass

on to the defendant No.3 through a registered sale deed and thereafter, it was pass on to defendant No.4 through a gift deed. These sale deeds and gift deeds are registered with the registering authority and they are having presumptive value unless contrary is proved. The plaintiffs at this stage, they have not placed any materials to rebut such presumption. Therefore, for having considered all the materials available on record, at this stage, this court is of the considered opinion that the plaintiffs have fails to make out prima-facie case. When the plaintiffs have fails to make out a prima-facie case, other two ingredients i.e., balance of convenience and irreparable loss would not survive for consideration. In this regard, this court would like to rely upon the judgment of Hon'ble High Court of Karnataka reported in the case of **GOWRISHANKARA SWAMIGALU VS. SIDDHAGANGA MUTT- ILR 1989 KAR 1701**, wherein it was held that, *existence of a prima-facie case in these matters of granting injunction is really the harbinger or the*

all clear design to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima-facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stage itself. But, if there was a prima-facie case then other considerations governing the grant of injunction would come in to fully and will also have to be evaluated before granting or refusing the injunction. The relief of injunction is a remedy in equity. Hence such relief must be bestowed upon only those whose reputation and hand both spotlessly clean.”

11. In another case **KASHI MATH SAMSTHAN Vs SRIMAD SUDHINDRA THIRTHA SWAMY, reported in 2009-Scale-14-274**, Hon’ble Apex Court held that- *“it is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to*

prove that he has made out a prima-facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima-facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima-facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted”

12. Furthermore, the plaintiffs themselves by placing so many documents on records, which themselves at this stage, discloses that the defendant No.5 has purchased the suit property from defendant No.1 and his brother through a registered sale deed. Thereafter, he has conveyed title through a sale deed in favour of defendant

No.3. Thereafter, the defendant No.3 has gifted the suit property in favour of defendant No.4 and now the revenue records are standing in the name of defendant No.4 which are also having presumptive value under Sec.133 of Karnataka Land Revenue Act. In order to rebut presumption, at this stage, the plaintiffs have not placed any materials. Under such circumstances, for having regards to the materials available on records, at this stage, it discloses that the defendant No.4 is in possession and enjoyment of suit property as on the date of suit or as on the date of counter claim. She has made out prima-facie case. As such, the plaintiffs by filing the present suit denied the title of the defendant No.4 and her possession by filing the present suit and denying her title and possession, it amounts to interference. The defendant No.4 is going to suffer loss rather than the plaintiffs if injunction is not granted as sought by the defendant No.4 in IA No.2. Therefore, **I answered Point**

No.1 to 3 in the Negative and Point No.4 to 6 in the 'Affirmative'.

13. Point No.7 : In view of findings on Point No.1 to 6, I proceed to pass the following;

ORDER

The I.A.No.I filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC., is hereby dismissed.

The I.A.No.II filed by the defendant No.4 under Order 39 Rule 1 and 2 of CPC., is hereby allowed.

The plaintiffs and their men, agents are hereby restrained from interfering with the possession and enjoyment of defendant No.4 over the suit property till disposal of suit.

(Dictated to the stenographer, transcribed by him and corrected, signed and pronounced by me in the open court on 2nd day of June, 2026)

**(KOTEPPA KAMBLE),
Sr. Civil Judge & JMFC,
Indi.**