

Order passed below Exh.5

The present application is filed by the plaintiff under Order XXXIX Rule 1 & 2 of Civil Procedure Code, 1908 for grant of temporary injunction against defendants from restraining, interfering or causing any sort of obstruction in the peaceful possession of the plaintiff over suit property.

2. The factual matrix of the plaintiff's case as under :-

The plaintiff has filed suit for declaration of ownership and perpetual Injunction. He is the uncle of defendants. Defendants are real brother inter-se and all of them are residing at Udgir. Plaintiff contended that, father of defendants Mohmed Bashiroddin purchased land admeasuring 6 H. 63 R. out of Sy.No.213 situated at Udgir under registered sale-deed bearing no.72/1970 dtd.08/01/1970. Plaintiff and father of defendants were running a hotel at that time. He further contended that, father of defendants passed away in the year 2002 leaving behind defendants and four daughters. He contended that, sister of defendants thereafter relinquished their right in the property in favour of defendants by executing registered document bearing no.4005/2004 dtd.24/12/2004. Thus, defendants become absolute owner. Plaintiff further contended that, his three sons never looked-after him. As the

defendants were doing well and earning a good amount, they due to love and affection towards the plaintiff, gifted half land i.e. 3 H. 32 R. land out of 6 H. 63 R. from eastern side in presence of respectable persons and their relatives.

3. He further contended that, defendants were not taking any crop and the land was barren land and he was able to cultivate it. When defendants came to know that, plaintiff earned a lucrative amount from barren land they changed their mind. On 14/03/2017 defendants called plaintiff to their house and asked him to vacate the possession of suit land. When plaintiff reminded the gift (Hiba) in his favour, defendants flatly refused gift (Hiba). When on 14/04/2017 plaintiff was harvesting his land defendants caused obstruction and threatened him. He further contended that, defendants are taking disadvantages of their names in revenue record. Hence, the plaintiff constrained to file the present suit and make this application against defendants for not to interfere in to peaceful possession of plaintiff over the suit property till disposal of the suit.

4. Per contra, Ld. Counsel Shri. N. N. Patel resisted the said application by filing written statement at Exh.27 on behalf of defendants. They admitted that, father of the defendants Mohmed Bashiroddin purchased land admeasuring 6 H. 63 R. out of Sy.No.213 situated at Udgir under registered sale-deed bearing no.72/1970 dtd.08/01/1970. But, they denied both the brothers were running hotel at that time. They contended that, their father was running hotel at Old Bhaji

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Market, Udgir for considerable period. They contended that, plaintiff's one son namely Khalil Ahmed is serving at Zilla Parishad High School, Udgir. He also publishes weekly news paper and other two sons are doing business of fiber and iron at Udgir. They further contended that, son and wife of plaintiff were maintained him. They denied Gift(Hiba) in favour of the plaintiff. They specifically denied boundaries shown towards the west remaining half portion of land Sy.No.213. They contended that, parties to the suit have no landed property except one house situated at Paigamparpura, Khadkali Galli, Udgir having about 10 rooms. His father and plaintiff separated from each other since long back. They denied poor financial condition of the plaintiff. According to them plaintiff was contractor and was councilor of Municipal Council, Udgir from 1985 to 1991. They are cultivating the suit land with the help of servant Shankar Babu Chaudhary. They further contended that, value of suit land has been drastically increased due to development of Udgir City. Hence, due to ill-intention to extract some money plaintiff filed present application. Hence, they prayed for rejection of the application.

5. Heard both the sides. Perused application, affidavit, say and documents on record. Considering rival contention of both the sides following points arise for my determination and I have record my findings to them for the reasons to follow:-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the plaintiffs have a prima-facie case?	In the negative.
2)	Whether the plaintiffs would suffer irreparable injury if their prayer for temporary injunction is not granted?	In the negative.
3)	Whether the balance of convenience is in favour of the plaintiffs ?	In the negative.
4)	What order?	As per final order

### R e a s o n s

#### As to points No.1 to 4 :-

6. As points no.1 to 3 are inter linked with each other I prefer to discuss it under one common caption.

7. I have given careful consideration to the submission made by the counsels of the parties. I have perused entire materials available on record including the plaint, application for temporary injunction, affidavit, written objections of the Opposite Party and documents filed on record.

8. According to the plaintiff, he is the owner

and possessor of the suit property. He filed relinquish deed executed by sisters of defendants, 7/12 extract of suit land and mutation entry No.1344 etc. He contended that due to love and affection towards him, defendants gifted half land i.e. 3 H. 32 R. land out of 6 H. 63 R. from eastern side to him. It is his say that certain respectful persons were present at the time of Gift (Hiba). However, plaintiff failed to file affidavits of witnesses on the point of Gift (Hiba). Plaintiff to prove that in pursuance of the oral gift the possession was obtained and the land in question was recorded in his name. There is no proof that the land was mutated in his favour. Plaintiff contended that he is in possession of the land sowing Soyabean, Tur etc. but he has not filed any document as he is cultivating land. On the contrary, Defendants filed 7/12 extract of suit land which indicates the name of defendants as being in cultivation column thereof. As well, they filed some photographs of suit land and affidavits of Milind Gaikwad and Kiran Apte.

9. Except the self serving statements made by the plaintiff and his two witnesses i.e. Gaus Mohamed Haji Mohamad Ahmadkhan and Shaikh Bashiroddin there is nothing on record to show that oral gift(Hiba) was executed by defendants in his favour. There is no oral or documentary evidence on record regarding oral gift(Hiba).

10. The primary purpose of granting interim relief is the preservation of properties and interest in the dispute till legal rights and conflicting claims of the parties are

adjudicated. Moreover, this is the primary stage of proceeding. Sufficient evidence is yet to be come before the Court. The Court is not in a position to settle the right between the parties. The Court is only acted upon materials placed by the parties before the Court. All these points can be well adjudicated after gone through evidence. Now, at this juncture, the Court only relying on the submission made by the parties and documents filed by them.

11. In these circumstances I am of the opinion that plaintiff has failed to made out prima facie case and also balance of convenience is in his favour. If the relief sought by plaintiff is granted, then there is a possibility of multiplicity of proceedings and defendants may suffer irreparable loss. On the other hand no loss or prejudice is going to cause to the plaintiff as he is going to get ample opportunities to put forth his case while hearing of this suit.

12. Hence, I am answering points no.1 to 3 in the negative. For the above said reasons application deserves to be rejected. Considering the facts and circumstances of the case, Hence, I proceed to pass following order:-

O r d e r

Application is hereby rejected with cost.

( P. S. Sonkamble )

3<sup>rd</sup> Jt. Civil Judge Junior Division,  
Udgir.

Date:- 11/10/2018.

### Certificate

This is to certify that, the contents of this uploaded judgment/ order are same and correct as per the original judgment/order, signed by the Presiding Officer.

Sd/-

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