

RCS No. 16/2019
(Dattu Keru Vs. Jotiram Keru)
(CNR No. MHSN070000902019)

ORDER BELOW Exh. 5
(Passed on 27th March, 2019)

This application is filed by plaintiff seeking relief of temporary injunction under order XXXIX Rule 1 & 2 of The Civil Procedure Code.

Facts which gave rise to the present application are as under-

2. Plaintiff has filed this suit is filed for declaration and perpetual injunction in respect of the agricultural lands situated within the jurisdiction of village Deshing, Tal. K'Mahankal which is more specifically mentioned in the plaint para No. 2 and hereinafter referred to as '*Suit land*'.

3. It is the case of the plaintiff that, defendant is his real brother. As plaintiff has no children to look after him, he had executed the gift-deed in respect of the agricultural lands owned by him i.e. the suit land in favour of the defendant in the year 2012. The possession of the suit land was also delivered to the defendant against which defendant had agreed to maintain the plaintiff and his wife till their death. However, recently defendant has started neglecting plaintiff and his wife without any reason. He also did not provide expenses for the operation of the plaintiff. Therefore, plaintiff felt that, defendant has deceived

him while executing the gift-deed in his favour. Therefore, plaintiff intends to revoke the said gift-deed and has filed this suit for declaration to that effect and perpetual injunction. By way of this application, plaintiff has sought the relief of temporary injunction to restrain defendant from obstructing the plaintiff and from creating third party interest in the suit land in any manner till final disposal of this suit.

4. Defendant has contested this application as well as suit by filing his written statement / reply vide Exh. 13. He has denied the claim of plaintiff except the execution of the registered gift-deed in his favour dated 10.02.2012. He has put-forth the specific case that, he has maintained the plaintiff and his wife properly. He has expended amounts for treatment of plaintiff and his wife and also developed the suit land for irrigation. However, other relatives of plaintiff have enforced the plaintiff to file this suit in order to grab the land of plaintiff. Therefore, defendant has prayed for dismissal of this suit as well as this application with costs.

5. Heard learned Advocate Mr. A.A. Rajge for the plaintiff and learned Advocate Mr. A. C. Kulkarni for defendant at length.

6. Following points arise for my determination to which

I have given my findings alongwith reasons thereon as follows :

Sr. No.	POINTS	FINDINGS
1	Does Plaintiff prove that he is having prima facie case?	Partly in the affirmative.
2	Does Plaintiff prove that balance of convenience lies in his favour?	In the affirmative.
3	Does Plaintiff prove that he will suffer irreparable loss if temporary injunction is not granted in his favour ?	In the affirmative.
4	What order ?	Application is partly allowed.

REASONS

7. Prima-facie case, balance of convenience and irreparable injury are the three requirements for obtaining injunction. One of the three requirements, as stated above, for obtaining injunction is that the plaintiffs must establish a prima-facie case in their favour. The Court must not only be satisfied that the claim is not frivolous or vexatious but there is a serious question to try. The requirement of prima-facie case need the plaintiff to establish from the findings that he has a debatable case in his favour and without the same no injunction can be granted.

As To Point Nos. 1 to 3 :-

8. All these points are interlinked and interconnected with each other, therefore taken for consideration at once for convenient discussion.

9. I have minutely gone through the pleadings of both the parties and documents on record. It is admitted position that, plaintiff and defendant are real brothers. Admittedly, plaintiff and his wife have no children or Class-I heirs to look after them. It is also admitted position that, plaintiff has executed the registered gift-deed in respect of the suit land in favour of the defendant. Admittedly, the suit possession of the suit land is also delivered to the defendant on the date of execution of gift-deed dated 10.08.2012.

10. Now it is the case of plaintiff that, he had executed gift-deed in favour the defendant with a view that defendant will maintain him and his wife during their lifetime. However, as defendant has started neglecting him and his wife, plaintiff intends to revoke the gift-deed. In this regard on bare perusal of the gift-deed dated 10.08.2012 it is seen from its recitals that, donee i.e. defendant was properly maintaining the plaintiff and will also maintain him properly. Therefore, plaintiff has executed the gift-deed in favour of the defendant in respect his ancestral agricultural lands out of love and affection. Admittedly, no

condition or clause as to the revocation of the said gift-deed is mentioned therein. Though this is the case, it is seen from the pleadings that, both the parties have conflict on the count of maintenance of plaintiff and his wife. Both of them have made counter allegations against each other in respect of maintenance.

11. In such situation, whether plaintiff would succeed to establish his case is the question to be decided on merits by giving him an opportunity to lead the evidence. However, at this stage admittedly, the suit land is standing in the name of defendant and also in his possession by virtue of the gift-deed in question. Therefore, in my view, to avoid the multiplicity of the proceedings, restraining the defendant from creating third party interest in the suit land till final disposal of the suit would be the proper interim relief to the plaintiff. No harm or prejudice would be caused to defendant if the suit land is not alienated by him till final disposal of the suit which is admittedly gifted without consideration to him by plaintiff against his maintenance as well as maintenance of his wife.

12. On the other hand, if the suit land is transferred by the defendant on the basis of his name entered in record of rights, it would create multiplicity of proceeding unnecessarily. At this stage, plaintiff is aged about 90 years. Considering these aspects I am of the view that, application of the plaintiff deserves

to be allowed to the extent of creating third party interest in the suit land till final disposal of this suit. To that extent, plaintiff has established his prima facie case. He would suffer from irreparable loss if an order in the above terms is not passed against the defendant. The balance of convenience tilts in favour of the plaintiff. Hence, I answer point No. 1 to 3 partly in affirmative and pass following order to answer point No. 4 :-

ORDER

1. Application below Exh. 5 is partly allowed.
2. Defendant is hereby temporarily restrained from alienating or creating any third party interest in the suit land as specifically described in paragraph No. 2 of the plaint till final disposal of the suit.
3. Costs in cause.

Date: 27.03.2019.
K'Mahankal.

Sd/-
(Pravin. R. Navale)
Civil Judge Junior Division,
K'Mahankal.